

**SUBCHAPTER R : MANAGEMENT OF WHOLE USED OR SCRAP TIRES**  
**§§330.801-330.818, 330.820-330.836, 330.838, 330.840-330.889**  
**Effective May 15, 1997**

**§330.801. Purpose.**

The purpose of the rules in this subchapter is to establish procedures and requirements for the safe storage, transportation, processing and recycling, reuse or energy recovery of whole used or scrap tires, scrap tire pieces or shredded tire pieces.

**§330.802. Applicability.**

(a) The sections in this subchapter are applicable to persons that are involved in the generation, transportation, processing, storage, recycling, reuse or energy recovery of whole used or scrap tires or scrap tire pieces that are classified as municipal solid waste and regulated by the Texas Natural Resource Conservation Commission (commission or TNRCC) pursuant to §330.3 of this title (relating to Applicability). The sections in this subchapter are not applicable to whole used or scrap tires that are classified as industrial solid waste.

(b) A tire becomes a scrap tire and is eligible for reimbursement under the Waste Tire Recycling Fund (WTRF) when it is discarded by a person after it has been utilized for its intended purpose. A used tire that can be salvaged and used for another purpose, retreaded, or sold as a good used vehicle tire is not subject to the requirements of this subchapter, except as noted in §330.807 of this title (relating to Generator Record Keeping) and §330.889 of this title (relating to Special Condition for Beneficial Use of Scrap Tires). A whole used tire that cannot be reused for or legally modified to be reused for its original intended purpose is a scrap tire and is subject to the requirements of this subchapter.

(c) Whole used or scrap tires that can be salvaged and used for another purpose, retreaded, or sold as a good used vehicle tire are exempted from the requirements to be split, quartered, or shredded at processing sites. All discarded tires will be subject to manifesting by registered generators in accordance with the requirements in §330.807 of this title (relating to Generator Record Keeping). Tire stockpiles being held for adjustment by the manufacturer must be classified by the manufacturer for reuse, recycling or energy recovery within 90 days. Used tires being held for resale that are stockpiled shall receive appropriate vector control made at a frequency based upon weather conditions and other applicable local ordinances.

(d) Scrap tires that are eligible for reimbursement under this subchapter are prohibited from disposal in a landfill. Landfill owners and operators who knowingly accept and dispose of WTRF program-eligible tires shall be subject to any commission action authorized by law to secure compliance, including the assessment of administrative penalties or civil penalties as prescribed by law.

(e) A whole used or scrap tire, attached to a rim, that is received at a waste tire facility, storage site, disposal site, or other solid waste facility shall be removed from the rim and processed in accordance with this chapter.

(f) Scrap tires that are off-the-road tires intended for use on heavy machinery, including an earth mover/dozer, a grader, or mining equipment pursuant to §330.872(h) of this title (relating to WTRF Program Operation) are exempt from the requirements to be split, quartered or shredded at a storage site or a permitted landfill. Adequate vector control shall be maintained at the registered waste tire storage facility that is storing these tires.

(g) Scrap tires that are off-the-road tires intended for use on heavy machinery, including an earth mover/dozer, a grader, or mining equipment pursuant to §330.872(h) of this title (relating to WTRF Program Operation) will not be eligible for reimbursement from the WTRF unless they come from priority enforcement list (PEL) sites.

(h) No more than 500 scrap tires or that equivalent in shredded tire pieces shall be stored at a facility that is not registered with the commission.

(i) Mobile tire processing facilities shall be considered waste tire facilities and required to comply with all applicable requirements contained in this subchapter relating to waste tire facilities.

(j) The commission shall appoint to the Municipal Solid Waste Management and Resource Recovery Advisory Council, one registered fixed waste tire processor and one registered mobile tire processor pursuant to the Texas Health and Safety Code, §363.041 (relating to Composition of Advisory Council).

(k) Motion for reconsideration. The applicant or a person affected may file with the chief clerk a motion for reconsideration, under §50.39(b)-(f) of this title (relating to Motion for Reconsideration), of the executive director's final approval of an application for a registration under this subchapter.

Adopted April 16, 1997

Effective May 15, 1997

### **§330.803. Definitions.**

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise. Other definitions, pertinent to specific sections, are contained within the appropriate sections.

**Alter** - The modification of any record keeping document kept or received by any entity subject to the requirements of this subchapter.

**Crumb rubber** - For the purpose of this subchapter, crumb rubber is a coarse particle matter that does not pass through a number 80 mesh screen resulting from mechanical shredding or cryogenic processes involving scrap tires.

**End user** - A waste tire recycling facility or waste tire energy recovery facility, approved by the executive director, that accepts whole scrap tires, scrap tire pieces or shredded tire pieces for further utilization either to manufacture a new product which it sells for consumption, or to use as tire derived fuel.

**End use market** - A specific person or facility, approved by the executive director, involved in the purchase of whole tires, scrap tire pieces or shredded tire pieces in order to recycle the material to manufacture a new product which is sold on an ongoing basis, or to use the material as tire derived fuel.

**Fleet operator** - An entity that owns or operates more than 15 vehicles and generates 30 or more whole used or scrap tires per quarter.

**Generator** - An entity that accepts whole used or scrap tires or scrap tire pieces for temporary storage, except a waste tire energy recovery facility and a waste tire recycling facility, is a fleet operator, is an automotive dismantler, or is a whole new or used tire retailer, wholesaler, manufacturer, recapper or retreader.

**Good used tire** - A used tire, not including a recapped or retreaded tire, suitable for continued use for its original intended purpose.

**Green tire** - The casing form of a tire that has not been cured or does not have a tread or marking of any kind.

**Industry standard two-inch minus particle size** - For the purpose of shredding for reimbursement under the WTRF, the tire shred must fall through a screen with holes not greater than two inches in diameter and the shred must be substantially free of wire.

**Manufacturer reject tire** - A tire rendered defective in the manufacturing process, whether the tire is determined to be defective before or after consumer purchase.

**Mobile tire processor** - A waste tire facility that is registered as a mobile facility at which scrap tires or tire pieces are collected and shredded for delivery to a waste tire storage facility, or a facility that recycles, reuses, or recovers the energy from the shredded tire pieces.

**Monthly cumulative closure cost estimate** - The accumulated total of financial assurance as approved by the executive director in the registration of facilities regulated by this subchapter and requiring financial assurance.

**Operator** - The person responsible for the overall operation of the facility.

**Owner** - The person or company who owns the facility or part of a facility.

**Postconsumer waste** - A material or product that has served its intended use and has been discarded after passing through the hands of a final user. For the purpose of this subchapter, the term does not include industrial or hazardous waste.

**Powdered rubber** - For the purpose of the subchapter powdered rubber will be considered a fine particle matter that passes through a number 80 mesh screen resulting from mechanical shredding or cryogenic processes involving scrap tires.

**Program review** - A review of records by WTRF program staff that may occur prior to or after any claims for reimbursement have been paid. Such reviews will occur on an as needed basis and may include an investigation of the records documenting the generation, transportation, processing, storage, burning, and recycling of scrap tires or shredded tire pieces. Such reviews may include investigations of associated waste tire storage facilities, waste tire recyclers, waste tire energy recovery facilities and facilities, located in-state or out-of-state, from which the party has received tires or to which the party has delivered tires. Only waste tire facilities, waste tire energy recovery facilities and waste tire recycling facilities are subject to program reviews.

**Recyclable material** - Material that has been recovered or diverted from the solid waste stream for purposes of reuse, recycling, energy recovery, or reclamation, a substantial portion of which is consistently used in the manufacture of products or processes which may otherwise be produced using raw or virgin materials. Recyclable material is not solid waste. However, recyclable material may become solid waste at such time, if any, as it is abandoned or disposed of rather than recycled, whereupon it will be solid waste with respect only to the party actually abandoning or disposing of the material.

**Rural county** - A county having a population of less than 50,000.

**Scrap tire** - A waste tire that has been disposed of and can no longer be used for the purpose for which it was originally intended.

**Shredding** - The mechanical reduction of a scrap tire or scrap tire pieces.

**Shredded tire piece** - A particle of a scrap tire or scrap tire piece that has been split, quartered, or shredded to an industry standard two-inch minus particle size or other size approved by the executive director as set by a contract requirement related to recycling or end use of the particles.

**Supersize pile** - For the purpose of this subchapter, a supersize pile shall be any shredded tire pile in excess of 8,000 square feet up to a maximum of 24,000 square feet. All piles designated as supersize shall be required to receive prior approval from the local fire marshal, publish public notice of intent, and maintain a 40-foot fire lane.

**Tire piece** - A portion of a waste tire such as the sidewall, tread, bead, etc. generally though not necessarily disposed of by a business that uses some other part of the waste tire to make a product. The discarded portion of the waste tire can be shredded for reimbursement from the WTRF and shall be addressed in any PEL site clean-up plan.

**Tire recycling collection center** - A site operated by a governmental entity receiving scrap tires or scrap tire pieces from the general public for shipment to a registered waste tire facility, waste tire energy recovery facility, or waste tire recycling facility. Such facilities can only be operated by governmental entities.

**Tire shredder** - A piece of equipment used to split, shred, or quarter tires which is either stationary or bolted in place and cannot be transported from one area to another, or a piece of equipment used to split, shred or quarter tires which is mounted on wheels or is skid mounted and is hauled from one location to another within the state.

**Tire transfer station** - A facility operated by a waste tire facility, waste tire recycling facility or waste tire energy recovery facility that receives scrap tires or scrap tire pieces from multiple generators for shipment to a registered waste tire facility, waste tire energy recovery facility, or waste tire recycling facility.

**Transportation facility** - A facility where a registered waste tire facility, waste tire recycling facility or waste tire energy recovery facility may store scrap tires or scrap tire pieces for periods longer than 30 consecutive calendar days. For the purpose of this subchapter, such facilities are marine terminals, rail yards or trucking facilities.

**Utilize** - The process or activity performed by an entity involving the use of scrap tires, scrap tire pieces or shredded tire pieces at waste tire facilities, waste tire recycling facilities or waste tire energy recovery facilities.

**Utilizing** - The activity or process of shredding, recycling or burning for energy recovery.

**Waste tire energy recovery facility** - A facility at which scrap tires or shredded tires are used as a fuel including: a cement kiln; a utility boiler; a pulp and paper mill; a cogeneration facility; or other facilities designated by the commission.

**Waste tire facility** - A registered facility, not including a waste tire energy recovery facility or a waste tire recycling facility, at which scrap tires or tire pieces are collected and shredded for delivery to a waste tire storage facility, or a facility that recycles, reuses, or recovers the energy from the shredded tire pieces.

**Waste tire recycling** - Any process (including energy recovery) in which all or part of scrap tires or scrap tire pieces or shredded tire pieces are utilized either alone or in conjunction with other materials to make a product which has a commercial market verifiable by the executive director.

**Waste tire recycling facility** - An entity, not including a waste tire energy recovery facility, that manufactures from whole or shredded tires useful products with a certified end use.

**Waste tire recycling fund (WTRF)** - The fund into which tire fees collected on new tires or good used tires that are sold in Texas are deposited.

**Waste tire storage facility** - A registered facility at which scrap tires or shredded tire pieces are collected and stored to facilitate the future extraction of useful material for recycling, reuse, or energy recovery. The term does not include a registered waste tire recycling facility or waste tire energy recovery facility, marine dock, rail yard, or trucking facility used to store tires that are awaiting shipment to an entity for recycling, reuse, or energy recovery for 30 days or less.

**Waste tire transporter** - A registered entity that collects and transports whole used or scrap tires, or tire pieces or shredded tire pieces for storage, processing, recycling, or energy recovery.

**Waste tire utilizer** - An individual or company that is registered under this subchapter as a waste tire facility, waste tire recycling facility or a waste tire energy recovery facility.

**Weighed tire** - A unit of weight for scrap tires, shredded tires or tire pieces that is equal to 18.7 pounds.

Adopted May 29, 1996

Effective July 1, 1996

#### **§330.804. The Use of Tire Shreds in Landfills.**

To provide an incentive for the use of tire shreds in landfills, but still protect the viability of the municipal solid waste fund, the following procedures are established through December 31, 1996, upon which date this section shall expire:

(1) General. Owners and operators of municipal solid waste landfills who, after January 1, 1996, received commission or executive director approval to utilize tire shreds in their landfills as part of the drainage layer, protective cover or final cover, may request a one-time 50% reduction in their solid waste disposal fee of \$1.25 per ton, for every ton of tire shreds utilized. In addition, municipal solid waste landfill owners and operators who begin construction of a landfill in which the use of tire shreds for any of the above-listed uses had been previously authorized but delivery of said tire shreds occurred after January 1, 1996, may request a one-time 50% reduction in their solid waste disposal fee of \$1.25 per ton, for every ton of tire shreds utilized.

(2) Maintenance of the municipal solid waste fund. In order to ensure the continued viability of the Municipal Solid Waste Fund, the executive director may, on a prospective basis, suspend the reduction in solid waste disposal fees, or reduce the percentage of the reduction.

(3) Fee reduction application. To receive the reduction in the fee, owners and operators shall apply to the executive director utilizing the forms provided by the executive director. Applications shall be reviewed in the order in which they are submitted.

(4) Special requirements. The executive director may impose reasonable requirements on landfill owners or operators who apply to the Texas Natural Resource Conservation Commission for a reduction under this section, as necessary, to carry out the objectives of the section.

Adopted September 18, 1996

Effective October 9, 1996

#### **§330.805. Generators of Scrap Tires.**

(a) Applicability. The regulations contained in these sections establish standards applicable to the generators of whole used or scrap tires or scrap tire pieces. For the purpose of this subchapter, a generator shall

be a person that accepts whole used or scrap tires or scrap tire pieces for temporary storage, is a fleet operator, is an automotive dismantler, or is a whole new or used tire retailer, wholesaler, manufacturer, recapper, or retreader.

(b) Responsibility. Each generator shall be responsible for ensuring that scrap tires or scrap tire pieces are transported by a registered transporter. Each generator shall ask the transporter where their scrap tires or scrap tire pieces are being delivered to, and may designate on the waste tire manifest the destination of the scrap tires or scrap tire pieces that they generate.

(c) Generator. A generator shall not place a whole used or scrap tire or split, quartered, or shredded tire pieces in a dumpster for pickup by a collection vehicle that has an enclosed packer unit attached or that is used on a routine and/or regular collection route. All whole used or scrap tires and shredded tire pieces transported from a generator's location shall be transported and manifested in a separate, identifiable load.

(d) Invoices. Whole used tires sold as good used vehicle tires shall be invoiced according to §330.807 of this title (relating to Generator Record Keeping).

(e) Remuneration. A generator may not receive remuneration in exchange for scrap tires.

(f) Resale. A wholesale or retail tire dealer or a person in the business of selling new or good used tires for use on a vehicle or selling used vehicle parts shall accept from customers, without charge, used tires of the type and in a quantity at least equal to the number of tires the customer purchases. In addition, a generator is not required to accept a scrap tire from a customer who purchases a new or used vehicle on which the tires purchased are mounted.

(g) Rim removal. Generators shall arrange to remove scrap tires from the rim prior to transport to a waste tire utilizer. Failure to remove the rim may result in the waste tire utilizer charging the generator a fee for rim removal or refusing to accept the scrap tire.

Adopted May 29, 1996

Effective July 1, 1996

**§330.806. Generator Registration.**

(a) Individuals or companies that regularly dispose of whole used or scrap tires or scrap tire pieces and are therefore designated as generators shall obtain a registration number from the executive director. The generator must contact the executive director, identify the business as a regular volume or large volume whole used or scrap tire or scrap tire pieces generator, provide the business name, business tax identification number or social security number, mailing address, street address, or physical location, and the city and/or county in which the business is located.

(1) A regular volume generator is one that stores a maximum of one totally enclosed and lockable container.

(2) A large volume generator is one that stores a maximum of three totally enclosed and lockable containers.

(b) Registration numbers will be issued for each business collecting whole used or scrap tires or scrap tire pieces.

(c) The recipient of a generator registration number shall notify the executive director within 15 days, in writing, of any changes to generator information contained in commission records.

Adopted May 29, 1996

Effective July 1, 1996

**§330.807. Generator Record Keeping.**

(a) Maintenance of records. Originals of manifests, work orders, invoices or other documentation used to support activities related to the accumulation, handling, and shipment of whole used or scrap tires or scrap tire pieces shall be retained by the generator for a period of three years. All such records shall be made available to the executive director upon request.

(1) Any change made to the face of an original record shall be made by drawing a single line through the item being changed, ensuring that such item remains legible and readable. To the side of such mark, the person making the change shall place his/her initials with the date of such change.

(2) Any change made to the face of an original record and made in accordance with subsection (a) of this section shall be accompanied by a written justification stating the reason and purpose for the change. This written justification shall be attached to the original record and maintained in the same manner set forth in subsection (a) of this section for a period of three years. The justification shall include the date of the change, the full name and position of the individual making the change, and the justification shall be prepared simultaneously with the change to the original records.

(3) Should the executive director identify discrepancies/errors in records, an opportunity will be given to the mobile tire processor or waste tire facility to justify, in writing, any such errors or discrepancies. However, the executive director shall determine whether any written justification is adequate for the purposes of reimbursement.

(b) Manifest. Generators shall obtain from the waste tire utilizer(s) collecting whole tires from their place of business and complete, then maintain, a record of each individual load of whole used or scrap tires or scrap tire pieces hauled off-site from their business location. The record shall be in the form of a five-part manifest or other similar documentation approved by the executive director. The generator shall complete the following information on the manifest:

- (1) name and address of the generator and the type of generator;
- (2) generator's commission registration number;
- (3) date of the off-site shipment;
- (4) name and commission registration number of the transporter;

(5) whether the generator was monetarily charged by the transporter for the service of hauling away the whole used or scrap tires or scrap tire pieces;

(6) number or weight in pounds and the type of whole used or scrap tires or scrap tire pieces collected for transportation;

(7) name of responsible person(s) transporting the whole used or scrap tires or the shredded tire pieces;

(8) the physical location of the generator's site; and

(9) a signature of the representative of the generator acknowledging that the information on the manifest is true and correct.

(c) Completed manifest. A generator shall obtain the completed manifest within three months after the scrap tires or scrap tire pieces were transported off-site by the transporter.

(d) Uncompleted manifest. The generator shall notify the appropriate TNRCC regional office of any transporter or waste tire utilizer that fails to complete the manifest, who alters the generator portion of the manifest or fails to return the manifest within three months after the off-site transportation of the whole used or scrap tires or scrap tire pieces.

(e) Records. Generators shall maintain a record of whole used tires sold as good used vehicle tires and hauled off-site from their business location. The record shall be in the form of a manifest completed in accordance with subsection (b) of this section or a work order or invoice which includes the following information:

(1) name and address of the person who sold the whole used tires;

(2) date of the off-site shipment;

(3) number and the type of whole used tires sold; and

(4) name and address of the person or business who purchased the whole used tires. The generator shall retain the records for a period of three years and the records shall be made available to the executive director for review upon request.

(f) Notice. The generator shall maintain a copy of the commission notice confirming the status as a registered generator and the notice shall be made available to the executive director for review upon request.

Adopted May 29, 1996

Effective July 1, 1996

**§330.808. On Site Storage.**



(a) Generators of whole used or scrap tires or scrap tire pieces may store those same tires at the location where they are generated for a period not greater than 90 days. Whole used or scrap tires or scrap tire pieces stored at the generator's site must be transported off-site within 90 days of their accumulation. Tires stored outside in an uncontrolled pile shall be monitored for vectors, and appropriate vector control measures shall be utilized at least once every two weeks.

(b) Whole used or scrap tires or scrap tire pieces generated by and stored at a generator's location may be collected in a transportable collection container that is mobile, completely enclosed, and lockable for a period of not greater than 90 days. The collection container shall be secured when it is unattended. The entire container shall be hauled from the site by a registered transporter, taken to a registered tire processing or storage facility, and shall be manifested.

(c) Regular volume generators of whole used or scrap tires or scrap tire pieces may store those same tires at the location where they are generated provided the number of whole used or scrap tires or scrap tire pieces does not exceed 500 (or weight equivalent tire pieces or any combination thereof) on the ground or 2000 (or weight equivalent tire pieces or any combination thereof) in a totally enclosed and lockable container. Large volume generators may store those same tires or tire pieces at the location where they are generated provided the number of whole used or scrap tires or scrap tire pieces does not exceed 500 (or weight equivalent tire pieces or any combination thereof) on the ground or 2,000 (or weight equivalent tire pieces or any combination thereof) in each of three totally enclosed and lockable containers. Whole used or scrap tires or scrap tire pieces stored outside in a controlled pile shall be monitored for vectors, and appropriate vector control measures shall be utilized at least once every two weeks.

(d) Generators of scrap tires or scrap tire pieces shall only allow the accumulation of tires or tire pieces that were generated on-site to be stored at that same site. No scrap tires or scrap tire pieces from separately owned places of business shall be transferred to, accepted, or located at, a site where they were not generated, unless the site is registered with the commission as a large volume generator in accordance with §330.806 of this title (relating to Generator Registration) or a transfer station in accordance with §330.857 of this title (relating to Requirements for Registration for a Waste Tire Transfer Station or Collection Center). Generators of scrap tires or scrap tire pieces with multiple places of business may consolidate and store the scrap tires or scrap tire pieces from several business locations to one location providing the number of scrap tires or scrap tire pieces does not exceed 500 (or weight equivalent tire pieces or any combination thereof) on the ground or 2,000 (or weight equivalent tire pieces or any combination thereof) in a totally enclosed and lockable container. Scrap tires or scrap tire pieces stored outside in a controlled pile shall be monitored for vectors, and appropriate vector control measures shall be utilized at least once every two weeks.

(e) Retailers and wholesalers who sell good used tires as a commodity shall do so only from stock that has been sorted, marked, classified, and arranged in an organized manner for sale to the consumer, or has been designated on the manifest as removed for reuse by a registered transporter. Used tires that are to be resold as commodities, but are not sorted, marked, classified, and arranged in an organized manner for sale to the consumer, shall be considered as stockpiled scrap tires and the site shall be subject to registration as a waste tire storage facility, if the number of scrap tires or scrap tire pieces at the generator site exceeds 500 (or weight equivalent tire pieces or any combination thereof) on the ground or 2,000 (or weight equivalent tire pieces or any combination thereof) in a totally enclosed and lockable container.

Adopted May 29, 1996

Effective July 1, 1996

**§330.809. Transportation Requirements.**

(a) A generator shall initiate the manifest required in §330.807(b) of this title (relating to Generator Record Keeping) for each shipment of whole used or scrap tires or scrap tire pieces transported off-site.

(b) A generator may designate the destination of all scrap tires or scrap tire pieces generated at the business location.

(c) A generator may transport its scrap tires or scrap tire pieces to a waste tire facility, waste tire energy recovery facility or waste tire recycling facility, provided a tire transporter registration has been obtained from the executive director.

(d) A waste tire transporter or a waste tire facility shall not charge a fee to a wholesale or retail dealer of new tires or to a dealer of good used tires for collecting whole used or scrap tires or scrap tire pieces for delivery to a waste tire utilizer. This prohibition does not apply to the transportation of whole used or scrap tires classified as reusable under §330.808(e) of this title (relating to On Site Storage). This prohibition also does not apply to manufacturers, retreaders, fleet operators, automotive dismantlers, owners or operators of storage sites that contain whole used or scrap tires or scrap tire pieces, and wholesale and retail dealers of used tires.

(e) Used or defective tires shipped back to the manufacturer or manufacturer's representative for adjustment are not required to be transported by a registered transporter, provided the generator retains, for a period of three years, written records of the shipments, indicating the date of shipment, destination and the number of tires in each shipment. These records shall be made available to the executive director for review upon request.

(f) Where local ordinances require controls and records substantially equivalent to or more stringent than the requirements of subsection (a) of this section, generators may use such controls and records to satisfy the commission's requirements under this section, with approval by the executive director.

(g) Generators who haul tires between their own business location (such as used tire retailers moving inventory between their own stores or trucking companies servicing their own fleets) do not have to be registered as transporters, but they do need to register as transporters if they haul any whole used or scrap tires or scrap tire pieces to or from any other place that is not part of their own business.

(h) Retreaders and recappers who haul tires from customers for the purpose of retreading or recapping or for returning tires to customers after retreading or recapping do not have to register as transporters, however, they must register as transporters if they haul tires to a mobile tire processor, waste tire facility, waste tire recycling facility, waste tire energy recovery facility, or waste tire transfer station.

(i) A generator that the commission determines has used a manifest and commission generator number to pass out-of-state tires is not eligible for the free collection and transportation of waste tires generated at the generator's place of business. In addition to any administrative, civil, or criminal enforcement action, such generators shall be required by the commission to pay for the collection and transportation of generated tires and

the shredding, burning, or recycling of generated tires at the rate of 80 cents or 85 cents as specified in §330.841(h) of this title (relating to Waste Tire Facility Processors of Scrap Tires).

Adopted May 29, 1996

Effective July 1, 1996

**§330.810. Penalties for Generators.**

A generator that violates the requirements of this subchapter shall be subject to any commission action authorized by law to secure compliance, including the assessment of administrative penalties or civil penalties as prescribed by law. In addition, the commission, after notice and opportunity for a hearing, may suspend a waste tire generator registration upon initiation of enforcement proceeding for violations of this subchapter, or an order issued under this subchapter, until the conclusion of the enforcement proceeding.

Adopted May 29, 1996

Effective July 1, 1996

**§330.811. Transporters of Whole Used or Scrap Tires.**

(a) Applicability. The regulations contained in these sections establish standards applicable to transporters collecting and hauling whole used or scrap tires or shredded tire pieces. These sections are applicable to waste tire transporters and other tire transporters who transport whole used or scrap tires or shredded tire pieces to or from a registered generator, waste tire facility, registered waste tire storage site, waste tire recycling facility, waste tire energy recovery facility, transfer station or collection center, transportation facility, or Priority Enforcement List (PEL) site.

(b) Responsibility. Transporters shall maintain records using a manifest system as provided in §330.815 of this title (relating to Transporter Record Keeping). Each transporter shall be responsible for ensuring that scrap tires or shredded tire pieces are transported to a waste tire facility, a registered waste tire storage site, a waste tire recycling facility, waste tire energy recovery facility, transfer station, a recycler of whole used or scrap tires or shredded tire pieces, or a retreader.

(c) Prohibition. A waste tire transporter may not charge a fee to a wholesale or retail tire dealer for collecting scrap tires that were accepted for temporary storage by the dealer from purchasers of new or good used tires.

Adopted May 29, 1996

Effective July 1, 1996

**§330.812. Transporter Registration.**

(a) Transporters shall register their operations with the executive director. A person shall not transport whole used or scrap tires without registering with the executive director prior to commencing operations. An application for a transporter registration shall be made on a form obtained from the executive director upon request. The applicant may deliver the completed application to any commission regional office or mail the completed application to the following address: Texas Natural Resource Conservation Commission P.O. Box 13087, Austin, Texas 78711-3087. The following registration information must be provided to the executive director:

- (1) the name, physical address, mailing address, county, and telephone number of the applicant;
  - (2) the name, mailing address, and telephone number of partners, corporate officers, and directors;
  - (3) a description of vehicles to be registered, including the:
    - (A) make, model, and year of vehicles;
    - (B) vehicle license plate (tag) number including state and year;
    - (C) name of vehicle owner;
    - (D) capacity of vehicle; and
    - (E) type of vehicle.
  - (4) the anticipated number of tires to be hauled and/ or weight of shredded tire pieces to be hauled per year; and
  - (5) the business identification or social security number.
- (b) Transporters who are registered by the executive director shall maintain a copy of their commission registration notice containing their assigned registration number at their designated place of business and in each vehicle used to transport whole used or scrap tires.
- (c) Registrations shall expire on May 1, of each calendar year. Registrations are required to be renewed annually prior to the expiration date. Applications for renewal must contain the information required in subsection (a) of this section and shall be submitted by March 1, of each calendar year. The annual report form described in §330.815(c)(3) of this title (relating to Transporter Record Keeping), includes an application for renewal of a transporter registration and must be obtained from the executive director.
- (d) Transporters shall provide written notice to the executive director, within 15 days of any change to their registration if:
- (1) the mailing address or telephone number changes;
  - (2) the office or designated place of business is relocated; or
  - (3) the transporter's registered name is changed.
- (e) A new registration application shall be submitted, to the executive director within 10 days of a determination by the executive director that operations or management methods are no longer adequately described by the existing registration or ownership of the registered transporter is changed. Following the

executive director's determination, the old transporter registration number may be canceled or transferred to the new registrant.

(f) Suspension, revocation or denial of registration procedures are as follows:

(1) The commission may suspend or revoke a registration or deny an initial or renewal registration for:

- (A) failure to maintain a complete and accurate record of shipments of tires;
- (B) failure to maintain vehicles in safe working order as evidenced by at least two citations per vehicle from the Texas Department of Public Safety or local traffic law enforcement agencies;
- (C) altering waste shipping documents or shipment records;
- (D) delivery of whole used or scrap tires to a facility not registered to handle the tires;
- (E) failure to comply with any rule or order issued by the commission pursuant to the requirements of this chapter;
- (F) failure to submit the annual report required in §330.815(c)(3) of this title (relating to Transporter Record Keeping);
- (G) failure to pay registration fees pursuant to §330.817 of this title (relating to Transporter Fees);
- (H) illegal dumping of whole used or scrap tires;
- (I) collection or transportation of whole used or scrap tires without registration as required in this section;
- (J) failure to notify the TNRCC of any change in transporter registration information required in subsection (d) of this section;
- (K) illegally charging a transportation fee to a wholesale or retail dealer of tires; or
- (L) illegally transporting out-of-state scrap tires using a commission-approved manifest or transporter number.

(2) A transporter registration shall be suspended for a period of one year; however, depending upon the seriousness of the offense(s), the time of suspension may be increased or decreased. A transporter registration is revoked automatically upon a second suspension. If the registration is suspended or revoked, a transporter shall not transport whole used or scrap tires or shredded tire pieces regulated under this subchapter.

(3) The holder of a transporter registration that has been revoked by the commission may reapply for registration pursuant to this subchapter as if applying for the first time, after a period of at least one year from the date of revocation. If a transporter registration is revoked by the commission a second time, the revocation shall be permanent.

(4) Appeal of suspension, revocation or denial of initial or renewal registration procedures are as follows:

(A) An opportunity for a formal hearing on the suspension or revocation of registration may be requested in writing by the registrant by certified mail, return receipt requested, provided the request is postmarked within 20 days after a notice of proposed revocation or denial of registration has been sent from the executive director to the last known address of the registrant.

(B) An opportunity for a formal hearing on the denial of registration or renewal of registration may be requested in writing by the applicant by certified mail, return receipt requested, provided the request is postmarked within 20 days after a notice of denial has been sent from the executive director to the address listed on the application. If the registration is denied, a person shall not collect or transport whole used or scrap tires or shredded tire pieces.

(C) The formal hearing under this paragraph shall be a contested case in accordance with the requirements of the Administrative Procedures Act, Texas Government Code Annotated, §2001 et seq. (Vernon 1993) and the Texas Solid Waste Disposal Act, Texas Health and Safety Code Annotated Chapter 361 (Vernon 1993) and the rules of the commission.

(g) Transport vehicles owned and operated by municipalities, counties, or other governmental entities or agencies which are used to transport whole used or scrap tires to a waste tire facility, a waste tire storage facility, a waste tire recycling facility, or a waste tire energy recovery facility shall be exempt from registration under this section; however, the load of whole used or scrap tires shall be manifested. To properly manifest these tires, the generator portion of the manifest form should be completed showing the governmental entity's generator number, the number of tires hauled (separated by passenger and truck tires), the date of transportation, and physical location where the tires were removed from and to. The transporter portion of the manifest form should be completed as described in §330.815(a) of this title (relating to Transporter Record Keeping), using the governmental entity's generator number as the registration number.

Adopted May 29, 1996

Effective July 1, 1996

#### **§330.813. Delivery Requirement.**

Transporters may only deposit scrap tires at a registered waste tire facility, registered waste tire storage facility, waste tire energy recovery facility, or waste tire recycling facility. Scrap tires may not be commingled with any other type of waste material, except for incidental scrap tires picked up in enclosed packer units.

Adopted May 29, 1996

Effective July 1, 1996

#### **§330.814. Vehicle and Equipment Sanitation Standards.**

All vehicles and equipment used for the collection and transportation of whole used or scrap tires or shredded tire pieces shall be constructed, operated, and maintained to prevent loss of whole used or scrap tires or shredded tire pieces during transport and to prevent health nuisances and safety hazards to operating personnel and the public. Collection vehicles and equipment shall be maintained in a sanitary condition to preclude odors and insect breeding. Any vehicle or trailer used to transport whole used or scrap tires or shredded tire pieces shall be identified on both sides and the rear of the vehicle. The identification shall consist of the name and place of business of the transporter and the commission registration number using numbers and letters at least 2 inches tall. Trailers or trucks used to transport whole used or scrap tires shall be either fully enclosed and lockable, or have sidewalls of sufficient height to contain the load. Trailers and trucks transporting whole used or scrap tires in excess of the sidewall height of the vehicle shall be covered with a tarp during transit. Trailers and trucks transporting shredded tire pieces shall be covered with a tarp during transit.

**§330.815. Transporter Record Keeping.**

(a) Manifest.

(1) Transporters shall maintain a record of each individual collection and delivery. Such records shall be in the form of a five-part manifest form. The manifest shall include the following information:

(A) The name of the individual or company that transported the scrap tires or shredded tire pieces;

(B) the transporter registration number;

(C) the transporter's driver's license number and the state where the license was issued;

(D) the intended use of the scrap tires or shredded tire pieces;

(E) the adjustment in the number and type of scrap tires removed from the generator and delivered;

(F) location of the whole used or scrap tires removed from the load delivered; and

(G) the signature of the transporter acknowledging that the information on the manifest form is true and correct.

(2) Persons who are not transporters as defined in §330.811(a) of this title (relating to Transporters of Whole Used or Scrap Tires) may deliver whole used or scrap tires to a registered facility without a manifest.

(3) If the transporter removes, for beneficial reuse, all tires from an individually manifested load, the transporter shall return the original manifest to the generator within three months of the date of collection.

(b) Transportation. Transporters may transport whole used tires that can be used for the original intended purpose or modified to be used for the original intended purpose without a manifest, provided the load is accompanied by a work order or invoice which includes the following information:

- (1) name and address of the person who sold the whole used tires;
- (2) date of the off-site shipment;
- (3) number and the type of whole used tires sold; and
- (4) name and address of the person or business who purchased the whole used tires.

(c) Maintenance of records and reporting. The transporter shall retain all manifests, work orders or invoices showing the collection and disposition of the whole used or scrap tires or shredded tire pieces. Records shall be retained by the transporter at the designated place of business for a period of three years and made available to the executive director upon request.

(1) Any change made to the face of an original record shall be made by drawing a single line through the item being changed, ensuring that such item remains legible and readable. To the side of such mark, the person making the change shall place his/her initials with the date of such change.

(2) Any change made to the face of an original record and made in accordance with the subsection (c) of this section shall be accompanied by a written justification stating the reason and purpose for the change. This written justification shall be attached to the original record and maintained in the same manner set forth in subsection (a) of this section for a period of three years. The justification shall include the date of the change, the full name and position of the individual making the change, and the justification shall be prepared simultaneously with the change to the original records.

(3) Should the executive director identify discrepancies/errors in records, and opportunity will be given to the mobile tire processor or waste tire facility to justify, in writing, any such errors or discrepancies. However, the executive director shall determine whether any written justification is adequate for the purposes of reimbursement. Transporters shall submit to the executive director an annual report of their activities through December 31 of each calendar year showing the number and type of whole used or scrap tires collected, the disposition of such tires, and the number of whole used or scrap tires delivered to each facility. The report shall be submitted no later than March 1 of the year following the end of the reporting period. The report shall be prepared on a form provided by the executive director.

(d) Local ordinances. Where local ordinances require controls and records substantially equivalent to or more stringent than the requirements of subsection (a) of this section, transporters may use such controls and records to satisfy the commission's requirement under this section, following review and approval by the executive director.

Adopted May 29, 1996

Effective July 1, 1996

**§330.816. Interstate Transportation.**



Persons who engage in the transportation of scrap tires from Texas to other states or countries, or from other states or countries to Texas, or persons who collect or transport scrap tires in Texas but have their place of business in another state or country, shall comply with all of the requirements for transporters contained in this subchapter. If such persons also engage in any activity of managing whole used or scrap tires in Texas by storage, processing, or disposal, they shall follow the applicable requirements for operators of such activities. Persons who engage in the transportation of whole used or scrap tires which do not originate or terminate in Texas, are exempt from these regulations, except for §330.814 of this title (relating to Vehicle and Equipment Sanitation Standards).

**§330.817. Transporter Fees.**

(a) Applicability. Transporters are required to pay an annual registration fee to the executive director based on the total annual number of whole used or scrap tires or shredded tire pieces transported.

(b) Fee amount. The amount of the annual registration fee shall be based upon the total annual number of whole used or scrap tires or shredded tire pieces transported under each registration. After submission of the annual report indicating the actual number of whole used or scrap tires or shredded tire pieces transported, a billing notice with a payment coupon for the registration fee will be sent to the transporter and payment will be due within 30 days from the date of the notice.

(c) Fee schedule. The fees shall be calculated based on the total number of whole used or scrap tires or shredded tire pieces transported annually. The total weight of shredded tire pieces transported annually shall be converted to the number of whole used or scrap tires using a conversion factor of 18.7 pounds per tire. The following schedule shall be used to calculate the fee amount owing to the commission:

(1) For a total annual number transported of 1,000 whole used or scrap tires or less, the fee is \$25.00.

(2) For a total annual number transported greater than 1,000 whole used or scrap tires but equal to or less than 5,000 whole used or scrap tires, the fee is \$50.00.

(3) For a total annual number transported greater than 5,000 whole used or scrap tires but equal to or less than 10,000 whole used or scrap tires, the fee is \$100.00.

(4) For a total annual number transported greater than 10,000 whole used or scrap tires but equal to or less than 50,000 whole used or scrap tires, the fee is \$250.00.

(5) For a total annual number transported greater than 50,000 whole used or scrap tires but equal to or less than 200,000 whole used or scrap tires, the fee is \$400.00.

(6) For a total annual number transported greater than 200,000 whole used or scrap tires, the fee is \$500.00.

(d) Method of payment. The transporter's annual registration fee shall accompany the applicant's payment coupon and shall be submitted in the form of a check or money order made payable to the Texas Natural

Resource Conservation Commission and delivered or mailed to: Fiscal Division, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

(e) Revenue derived from fees charged under this section to transporters of whole used or scrap tires or shredded tire pieces shall be deposited to the credit of the waste tire recycling fund.

**§330.818. Penalties for Transporters.**

A transporter that violates the requirements of this subchapter shall be subject to any commission action authorized by law to secure compliance, including the assessment of administrative penalties or civil penalties as prescribed by law. In addition, the commission may, after notice and opportunity for a hearing, suspend a waste tire transporter registration upon initiation of enforcement proceeding for the violation of this subchapter or an order issued under this subchapter.

Adopted May 29, 1996

Effective July 1, 1996

**§330.820. Processor's WTRF Allocation Method.**

(a) Applicability.

(1) For the purpose of §§330.820-330.824 of this title (relating to Processor's WTRF Allocation Method, Processor's WTRF Allocation Model Factors, Calculation of Factors for Processor's WTRF Allocation Model, Determination of the Weighing Factors for the Processor's Allocation Model, and Notification of Allocation) and unless otherwise indicated, the Processor's WTRF is the annual allocated WTRF dollar amount that is available for reimbursement to waste tire facilities. It does not include the administrative funds for program operation for the TNRCC, the Texas Comptroller of Public Accounts, grants for waste tire recycling facilities and waste tire energy recovery facilities, reimbursements to waste tire energy recovery facilities, money designated by the legislature to be used for the cleanup and closure of Priority Enforcement list sites, and reimbursements for unpaid carryover.

(2) The requirements contained in these sections establish the allocation system for reimbursements from the Processor's WTRF if the commission has reason to believe that the balance of money appropriated from the WTRF will fall below \$500,000.

(3) For the purpose of allocation, paid generator and PEL credit occurs when a waste tire facility that in any month exceeds their generator or PEL percent of the allocated number of waste tires assigned for reimbursement purposes thus accruing credit only for amount of the paid generator and PEL tires in excess of the requirement. This paid credit may be used to meet the allocation maximum during a later month.

(4) If the commission has reason to believe that the balance of appropriated money from the Processor's WTRF will fall below \$500,000, the executive director may suspend the requirement to reimburse for the shredding of priority enforcement list tires, limit the number of tires for which a waste tire facility will be reimbursed or discontinue paid carryover, as defined in paragraph (3) of this subsection.

(5) The prescribed method of applying carryover credit accrued during a period when the Processor's WTRF is allocated will be unpaid carryover.

(b) Responsibility.

(1) The executive director shall develop a model to allocate the Processor's WTRF to prevent fund depletion that takes into consideration the following factors:

(A) waste tire facility's monthly average percentage of shredded tires that the processor has forwarded to a legitimate end user pursuant to §330.841(c) of this title (relating to Waste Tire Facility Processors of Scrap Tires);

(B) waste tire facility's historical average number of tires for which the processor has been reimbursed;

(C) appropriate payments to reflect the varying amounts of money available in the Processor's WTRF; and

(D) other factors as may be determined by the commission.

(2) The Processor's WTRF allocation model shall also consider available storage capacity and accrued end use credits pursuant to §330.884 of this title (relating to End Use Credit System) prior to final assignment of tires.

(3) The executive director may also consider temporary allocation increases to waste tire facilities that can demonstrate the willingness to serve areas of the state where a waste tire facility is not proximate. This will be determined by the executive director, based on generator requests for assistance.

(c) Funds reserved. The model for calculation of each processor's allocation shall be based on the total or remaining appropriated dollar amount allocated annually by statute to the Processor's WTRF, converted to number of tires, less the legislative minimum of \$500,000. The annual number of tires is then divided by twelve to determine the monthly number of tires available for allocation.

(d) Reallocation intervals. A new allocation amount for all registered mobile tire processors and waste tire facilities will be recalculated at six month intervals based on the fiscal year (September and March).

(e) Reimbursement requirements. Before allocating payments from the fund, the commission shall; reimburse waste tire facilities that have legitimate end users for 100 % of their shreds (including process wire, wire bead and fluff), award waste tire recycling facilities that are receiving grants as a lump sum amount, and reimburse waste tire energy recovery facilities that are receiving grants on a lump sum or \$ .80 per tire basis.

Adopted May 29, 1996

Effective July 1, 1996

**§330.821. Processor's WTRF Allocation Model Factors.**

(a) Based on the requirements contained in §330.820 of this title (relating to Processor's WTRF Allocation Method) the executive director shall use the following criteria to calculate the allocation for all waste tire facilities in the following manner:

(1) end use is defined as the average percentage of waste tire units, based on the waste tire facility's accrued end use credits or monthly contracts, the waste tire facility forwards to a legitimate end user approved by the executive director pursuant to §330.841(c) of this title (relating to Waste Tire Facility Processors of Scrap Tires);

(2) the historical shredding capacity is defined as the average number of tires the waste tire facility shredded monthly between the date the waste tire facility registered (based on the date of the waste tire facility registration approval letter) and 60 days prior to the date of allocation; and

(3) the appropriate payment to reflect the amount of money in the Processor's WTRF is the total amount of money allocated annually to the Processor's WTRF less the legislative minimum of \$500,000;

(b) All information used by the executive director to determine the criteria for each waste tire facility shall be obtained from reports required by this subchapter. Failure to submit the required information will result in non-credit for that specific criteria in the allocation model. Information that is determined or suspected to be inaccurate will result in non-credit for that specific criteria in the allocation model, however, the executive director will attempt to resolve any discrepancy with the waste tire facility prior to the determination of non-credit in the model.

(c) If necessary to ensure consistent and reliable collection of generator tires throughout the state, the executive director may include additional factors in the allocation. If any additional factors are to be included, the executive director will prepare a report identifying those factors and providing a justification for their inclusion in the allocation model. This report will be presented to the commission for approval during a regular agenda meeting, with appropriate notice provided. With the inclusion of additional factors in the allocation model, both the method for factor calculation contained in §330.822(a)-(d) of this title (relating to Calculation of Factors for Processor's WTRF Allocation Model) and for determination of the percentage weighing factor contained in §330.823(a)-(d) of this title (relating to Determination of the Weighing Factors for the Processor's Allocation Model) will be adjusted to include any additional factors. Any additional factors shall be consistent with the intent of this subchapter and the Texas Health and Safety Code, Subchapter P, and shall be designed to further the goals and objectives of the WTRF program.

Adopted May 29, 1996

Effective July 1, 1996

**§330.822. Calculation of Factors for Processor's WTRF Allocation Model.**

(a) Based on the requirements contained in §330.820 of this title (relating to Processor's WTRF Allocation Method) the executive director shall develop equations to calculate the individual three criteria. The numbers resulting from the equations will be called factors. The factors will be used to determine an allocation amount unique to each registered waste tire facility in the following manner:

(1) end use is calculated by subtracting the total amount of reimbursed waste tire units which remain stored in the waste tire facility's registered storage facility(ies) from the individual waste tire facility's total number of waste tire units reimbursed, then dividing that resulting number by the number of months the waste tire facility has been registered;

(2) the historical shredding capacity is calculated by dividing the total number of waste tire units reimbursed to each waste tire facility by the number of months that the waste tire facility has been registered. The number of months of registration is determined by subtracting the initial date of registration (based on the date of the waste tire facility registration approval letter), from the date of allocation and dividing by 30 days, then rounding to the nearest whole number; and

(3) the appropriate payment is calculated by determining the total amount of money appropriated to the commission during the previous 12 month period (February 1- January 31 for the March allocation and August 1- July 31 for the September allocation) for the Processor's WTRF less the \$500,000 legislative minimum.

(b) Upon calculating each waste tire facility's individual factors for all criteria, using the equations described subsection (a), the total of all individual factors for each of the criteria is determined by summing all individual waste tire facility's factors. Each individual factor is then divided by the total to give each waste tire facility a percentage factor. This percentage factor is then multiplied by the specific criteria weighing factor as determined by the executive director in §330.823 of this title (relating to Determination of the Weighing Factors for the Processors Allocation Model) to produce a weighing factor specific for each of the criteria for each waste tire facility. These specific weighing factors are totalled to obtain the weighted index for each registered waste tire facility.

(c) The allocation for each waste tire facility is then determined by dividing the total number of tires available monthly as calculated in §330.820(c) and (d) of this title (relating to WTRF Allocation Method) by 100 to determine each waste tire facility percentage of the total allocation which is essentially each waste tire facility's percentage of the shredding program. That number is then multiplied by the waste tire facility's individual weighed index as calculated in subsection (b) of this section to produce the specific individual allocation (in number of tires) for each waste tire facility.

(d) Prior to finalization of the allocation, the adequate capacity for the proposed six-month allocation period will be confirmed by comparing the remaining available storage capacity and available end use credits with the proposed allocation number. If the waste tire facility is determined to have inadequate available approved storage capacity for the full six-month allocation period or inadequate end use market delivery credits as described in paragraph (2) of this subsection, then the proposed allocation number for the six month period will be adjusted to accurately reflect the available approved storage capacity and end use market delivery credits.

Adopted May 29, 1996

Effective July 1, 1996

### **§330.823. Determination of the Weighing Factors for the Processor's Allocation Model.**

(a) The weighing factors are based on a total of 100% assuming the sum of the percentages for each of the two criteria equals 100% of the allocation to be distributed to the individual waste tire facilities. The criteria

of appropriate payments to reflect the varying amounts of money available in the fund will not be considered in this stage of the model calculation.

(b) The weighing factor for shreds forwarded to a legitimate end user shall 50% through December 31, 1995 and after January 1, 1996 shall be increased to 80%.

(c) Concurrently, the weighing factor for historical shredding capacity shall be 50% through December 31, 1995 and after January 1, 1996 shall be decreased to 20%.

(d) Should the executive director determine that other factors should be taken into consideration pursuant to §330.821(c) of this title (relating to Processor's WTRF Allocation Model Factors), the weighing factor for historical shredding capacity in subsection (c) of this section shall be decreased by 10% with the addition of one factor, or 5.0% per factor with the addition of two or more factors.

Adopted May 29, 1996

Effective July 1, 1996

**§330.824. Notification of Allocation.**

(a) The executive director shall notify all registered waste tire facilities that the Texas Natural Resource Conservation Commission intends to allocate semi-annually prior to the actual date of allocation. This notice of pending allocation will be sent via U.S. mail by the twentieth day of the month prior to the month of new allocation and shall contain the following:

(1) the data the executive director intends to use in the model for calculation of the new allocation numbers for all registered waste tire facilities;

(2) the requirement to notify the executive director of any errors in the data within two days of receipt of the letter to correct the information before the final model is run; and

(3) the requirement to provide missing data within two days of receipt of the executive director's letter if that letter indicates the waste tire facility's data is incomplete.

(b) Failure to notify the executive director of errors in the data, or failure to provide missing data within the time frame specified in subsection (a) of this section will result in non-credit for that specific criteria as indicated in §330.821(b) of this title (relating to Processor's WTRF Allocation Model Factors), and running of the allocation model on schedule for final notification.

(c) The final letter notifying all registered waste tire facilities of their new allocation number will be mailed by regular mail and by certified mail, return receipt requested, not later than September 1 or March 1, depending on the semi-annual allocation period.

(d) The waste tire facility shall begin using the new assigned allocation number immediately upon receipt and shall continue to use the number until notified otherwise, or until reallocation adjusts the previously assigned allocation number.

Adopted May 29, 1996

Effective July 1, 1996

**§330.825. Fiscal Audits.**

(a) Purpose. The purpose of this section is to establish procedures regarding the review of money expended from the WTRF as reimbursements and to assure payment from the WTRF occurs only for tires that are eligible for reimbursement as defined in this subchapter.

(b) Applicability. This subchapter applies to all requests for reimbursement from the WTRF. Those requesting reimbursement shall herein be considered a Reimbursement Responsible Party (RRP).

(c) Biennial fiscal audit. The commission biennially shall perform a fiscal audit of each RRP to ensure fiscal responsibility and accountability regarding reimbursements made under the WTRF. The RRP audited shall bear the cost of the fiscal audit.

(d) Duty of RRP.

(1) Each request for reimbursement by a RRP shall be supported by documentation as required in each applicable section of this subchapter. Each request for reimbursement shall be made on documents prescribed or approved by the executive director or, on a voluntary basis, shall apply by a removable storage medium stored in an industry standard file format acceptable to the commission.

(2) Each RRP who requests reimbursement from the WTRF shall do so for only those tires which are eligible for reimbursement in accordance with this subchapter.

(3) Each RRP shall maintain originals of all records required by applicable subsections of this subchapter for a minimum of three years at the registered address of business available for review at the executive director's request.

(4) Each RRP notified by the executive director of a pending fiscal audit inspection shall retain all records for the period beginning three years from the date of notice until completion of the audit and authorization of the executive director to destroy documents that have been stored in excess of the three-year document retention requirement.

(e) Reimbursement defined. Payment by the executive director of a reimbursement claim means only that the claim is potentially subject to a post-reimbursement fiscal audit. By payment of reimbursement claims from the WTRF, the executive director makes no statement or admission that the reimbursements are for eligible tires as defined in this subchapter, or that the tires were managed in accordance with the rules of this subchapter.

(f) Dispute of audit findings. Upon determination by the fiscal audit team that an overpayment has occurred, the executive director may attempt to resolve the issues of dispute through alternative dispute resolution (ADR) or informal meetings. The ADR procedures currently in use by the commission will be followed in all cases where audit findings are disputed. Failure by the RRP to provide requested back-up documentation during ADR or at the time of the informal meetings will result in the audit exceptions prevailing and implementation of §330.827 of this title (relating to Overpayment from the WTRF).

Adopted May 29, 1996

Effective July 1, 1996

**§330.826. WTRF Fiscal Audits.**

(a) The commission shall conduct biennial fiscal audits of reimbursements claimed and payments to achieve the purpose of this subchapter. Such fiscal audits may occur prior to or after claims for reimbursement have been paid. Such fiscal audits shall include, at a minimum, an investigation of the records supporting the requests for reimbursement as described in this subchapter. Such fiscal audits may include investigations of records from associated waste tire storage facilities, waste tire recycling facilities, waste tire energy recovery facilities and other facilities located in-state or out-of-state from which the RRP has received tires or to which the RRP delivered tires.

(b) The executive director shall submit to the RRP a preliminary fiscal audit report notifying the RRP of the findings of the fiscal audit not later than ninety days after the fiscal audit inspection.

(c) Upon the RRP's request for confidentiality as described in §330.875(b) of this title (relating to Confidentiality), documents submitted by RRP's to the executive director or copied by the executive director for the purpose of this section shall be considered confidential as described in §330.875(a) of this title.

Adopted May 29, 1996

Effective July 1, 1996

**§330.827. Overpayment from the WTRF.**

(a) If the executive director conducts a fiscal audit or investigation and concludes that reimbursement of a claim(s) was for an amount which was not justified, a notice of overpayment shall be sent via certified mail, return receipt requested to the RRP identifying the amount overpaid from the WTRF.

(b) Within 30 days of the date of receipt of a notice of overpayment, the RRP shall either submit a check returning the amount of the overpayment to the executive director or shall file a petition with the commission contesting the executive director's conclusion.

(c) All checks rendered to return overpayments shall be made to "The State of Texas - Waste Tire Recycling Fund", and mailed to the Chief Fiscal Officer, Texas Natural Resource and Conservation Commission, P.O. Box 13087, Capitol Station, Austin, Texas 78711-3087 with the notation "WTRF Waste Tire Facility or Energy Recovery Facility No. \_\_\_\_\_, overpayment return."

(d) If, after notice and opportunity for hearing, the commission determines that there was an overpayment, the commission may order the RRP to return the overpayment. The RRP ordered to return the overpayment may also be required, at the commission's discretion, to reimburse the commission for all reasonable hearing costs, including the costs of preparation.

(e) Upon notification of any commission hearing or court appeal to resolve overpayment disputes, all records reviewed for the determination of overpayment shall be retained for a minimum of three years and/or until the hearing decision is issued and/or the RRP is compliant with all decisions or orders.



(f) The executive director may seek an order from the commission to compel cooperation with a fiscal audit or investigation when deemed necessary to achieve the purposes of this subchapter.

(g) A RRP that violates the applicable sections of this subchapter shall be subject to any action authorized by law to secure compliance, including the assessment of administrative penalties or civil penalties as prescribed by law, and the suspension or revocation of registration.

(h) The information concerning the status of a fiscal audit, the findings associated with the fiscal audit and/or the preliminary fiscal audit report will not be made public until the audit is completely finalized unless otherwise determined by the commission or the executive director, or if the executive director receives a request for disclosure made under the Freedom of Information Act.

Adopted May 29, 1996

Effective July 1, 1996

**§330.828. WTRF Program Reviews, Applicability and Responsibility.**

(a) Purpose. The purpose of this section is to establish procedures regarding the review of records required of any person involved in the generation, transportation, processing, storage, burning, or recycling of scrap tires or shredded tire pieces to provide the most effective protection to the environment for the protection of public health and safety.

(b) Applicability. This subchapter applies to any person involved in the generation, transportation, processing, storage, burning, or recycling of scrap tires or shredded tire pieces.

(c) Responsibility. Each entity that generates, transports, processes, stores, burns, or recycles scrap tires or shredded tire pieces shall ensure that all WTRF activities are in compliance with all applicable sections of this subchapter and shall maintain records which document the WTRF activities as described in this subchapter.

(d) Cooperation. Each entity shall cooperate fully with any records review or investigation by the executive director to verify the proper management of scrap tires or shredded tire pieces.

(e) Records. Each entity shall maintain originals of all records required by applicable subsections of this subchapter for a minimum of three years.

Adopted May 29, 1996

Effective July 1, 1996

**§330.829. WTRF Program Reviews.**

(a) The executive director's staff shall conduct a sufficient number of program reviews of required records to achieve the purposes of this subchapter. Such reviews may occur prior to or after any claims for reimbursement have been paid. Such reviews may include an investigation of the records documenting the generation, transportation, processing, storage, burning, and recycling of scrap tires or shredded tire pieces. Such reviews may include investigations of associated waste tire storage facilities, waste tire recyclers, waste tire energy recovery facilities and facilities, located in-state or out-of-state, from which the party has received tires or to which the party delivered tires.

(b) Upon an entity request for confidentiality as described in §330.875(b) of this title (relating to Confidentiality), documents submitted by that entity to the executive director or copied by the executive director for the purpose of this subchapter shall be considered confidential as described in §330.875(a) of this title.

(c) The executive director may seek an order from the commission to compel cooperation with a program review or investigation when deemed necessary to achieve the purposes of this subchapter.

(d) Upon notification of any hearing or court appeal to resolve records disputes, all records reviewed shall be retained at a minimum of three years and/or until hearing decision is issued, and/or compliance with all decisions or orders is achieved.

Adopted May 29, 1996

Effective July 1, 1996

**§330.830. Penalties for Records Violations.**

An entity that violates the applicable sections of this subchapter shall be subject to any action authorized by law to secure compliance, including the assessment of administrative penalties or civil penalties as prescribed by law, and the suspension or revocation of registration.

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**§330.831. Storage of Whole Used or Scrap Tires or Shredded Tire Pieces.**

(a) Applicability. The regulations contained in these sections establish standards applicable to persons that operate waste tire facilities for reimbursement from the WTRF and store whole used or scrap tires or shredded tire pieces on any public or privately owned property. Storage of whole used or scrap tires or shredded tire pieces shall be considered as a temporary means of holding such tires or tire pieces and shall require permitting or registration in accordance with this subchapter. These sections do not apply to the use of tires in the storage, protection, or production of agricultural commodities.

(b) Responsibility.

(1) All persons shall properly register their property with the executive director if the intended use of the property is for the storage of whole used or scrap tires or shredded tire pieces as provided in this subchapter.

(2) Owners and/or operators shall ensure that the tire transporters or mobile tire processors that deliver scrap tires or shredded tire pieces at their registered waste tire storage facility are properly registered with the executive director as required by §330.812 of this title (relating to Transporter Registration) and §330.843 of this title (relating to Waste Tire Facility Registration).

(3) Owners and/or operators shall ensure that the tire transporters or mobile tire processors that deliver scrap tires or shredded tire pieces at their registered waste tire storage facility have manifested the scrap tires or shredded tire pieces as required by §330.815 of this title (relating to Transporter Record Keeping) and §330.845 of this title (relating to Waste Tire Facility Record Keeping).

(4) Owners and/or operators of waste tire storage facilities shall obtain all required necessary and appropriate state and local permits, licenses, or registrations and operate in compliance with such permits, licenses, or registrations, or other applicable state and local codes.

(5) Maintenance of Records. The waste tire storage facility shall maintain originals of all records required by this section for a period of three years. These records shall be made available to the executive director for review upon request.

(6) A waste tire storage facility shall maintain manifests of whole used or scrap tires or shredded tire pieces. The manifest form shall contain the following information filled out completely by the waste tire storage facility prior to final disposition of the whole used or scrap tires or shredded tire pieces:

(A) the name, physical address and telephone number of the individual or company that is storing or disposing of the whole used or scrap tires or shredded tire pieces;

(B) the waste tire storage facility registration number;

(C) the date and time of delivery of the whole used or scrap tires or shredded tire pieces to the storage or disposal facility;

(D) the number and type of whole used or scrap tires or the weight of shredded tire pieces stored at the registered waste tire storage facility; and

(E) the signature of an authorized representative of the waste tire storage facility acknowledging that the information on the manifest form is true and correct.

(7) If an application for registration for an VIII-R waste tire storage facility is received that is not administratively and technically complete, the WTRF staff shall notify the applicant of the deficiencies within 30 working days. If the additional information is not received within 60 days of the date of receipt of the deficiency notice, the executive director may return the incomplete application to the applicant and shall result in forfeiture of the application review fee. The executive director may extend the response time to a maximum of 270 days upon sufficient proof from the applicant that an adequate response can not be submitted within 60 days. If, however, the applicant does not submit an administratively and technically complete application within the time frames indicated, the application may be considered withdrawn without prejudice and shall result in forfeiture of the application review fee.

(8) Owners and/or operators of waste tire storage facilities shall ensure that the application for registration of the waste tire storage facility is completed and sealed by a Texas registered professional engineer.

(c) Recycling report. Effective January 1, 1994, and on a semiannual basis thereafter, waste tire storage facilities owners or operators shall report their recycling, reuse, and energy recovery activities to the executive director. The semi-annual report shall be prepared on a form provided by the executive director, and at a minimum the following information shall be required in the report:

(1) the name, physical address, mailing address, county and telephone number of the waste tire storage facility;

(2) the name, physical address, mailing address, county and telephone number of partners, corporate officers, and directors;

(3) a listing of all in-state or out-of-state, registered or unregistered waste tire recycling facilities or waste tire energy recovery facilities where the waste tire storage facility owner or operators currently delivers scrap tires or shredded tire pieces. Each waste tire recycling facility or waste tire energy recovery facility listed shall include the following information:

(A) name of responsible person, partners, corporate officers, and directors;

(B) phone number of company and responsible person;

(C) physical address and mailing address of the waste tire recycling facility or waste tire energy recovery facility;

(D) detailed description of process to recycle, reuse or recover the energy from the scrap tires or shredded tire pieces;

(E) copies of contracts and agreements between the waste tire storage site owners or operators and the waste tire recycling facility or waste tire energy recovery facility for the recycling, reuse or energy recovery of the scrap tires or shredded tire pieces;

(F) exact quantities, by month, (in number of tires or weight of scrap tires or shredded tire pieces) that the waste tire storage facility owners or operators delivered to the registered waste tire recycling facility or waste tire energy recovery facility.

(G) the duration of the contract or agreement and the total material intended to be delivered;

(4) a complete description of additional activities in which the waste tire storage facility owners or operators are currently involved that may be classified as encouraging, assisting, or promoting the growth of new, additional, or expanded recycling, reuse, or energy recovery facilities; and

(5) any information considered confidential shall be so indicated on each page of the report and submitted with a cover letter requesting that it remain confidential. Such request shall be recognized as confidential pursuant to §330.875 of this title (relating to Confidentiality).

Adopted May 29, 1996

Effective July 1, 1996

**§330.832. Waste Tire Storage Facility Classification.**

(a) Classification of a waste tire storage facility shall be based on the number of whole used or scrap tires or shredded tire pieces stored, the origination of the whole used or scrap tires or shredded tire pieces stored, and the type of storage operation.

(b) The executive director shall classify all waste tire storage facilities according to the following:

(1) Type VIII-WT. A Type VIII-WT facility is one in which less than 500 scrap tires are stored on the ground or 2,000 scrap tires are stored in a totally enclosed and lockable container. Storage of scrap tires at a Type VIII-WT site shall be temporary. Scrap tires stored at a Type VIII-WT facility must be transported to a permitted or registered storage or disposal facility within 90 days following their accumulation.

(2) Type VIII-R. A Type VIII-R facility is one in which more than 500 scrap tires or an equivalent amount of shredded tire pieces are stored on the ground or 2000 scrap tires or an equivalent amount of shredded tire pieces are stored in a totally enclosed and lockable container. Storage of scrap tires or shredded tire pieces shall be temporary. Storage of scrap tires that are not designated as reusable used tires, is limited to 90 days from delivery date. Shredded tire pieces resulting from tires shredded subsequent to January 1, 1996, may be stored for a period of time not to exceed 12 months, unless written authorization for a longer storage period has been granted by the executive director because the recycling market cannot accommodate the shredded tire pieces. A Type VIII-R site shall be registered by the executive director.

(3) Shredded tire pieces that were shredded and stored at an VIII-R facility prior to January 1, 1996 shall be removed from the VIII-R facility and recycled or used for energy recovery based on a schedule developed and/or reviewed and approved by the executive director subsequent to the January 1, 1996 recycling or energy recovery deadline. The executive director shall meet with all VIII-R facility owners or operators on an individual basis beginning in the first quarter of the 1996 calendar year to assist owners and operators in the development of the shred removal plan.

Adopted May 29, 1996

Effective July 1, 1996

**§330.833. Waste Tire Storage Facility Registration.**

(a) Persons who store scrap tires or shredded tire pieces shall be required to obtain a waste tire storage registration number from the executive director. Generators that temporarily accumulate scrap tires for delivery, waste tire energy recovery facilities and waste tire recycling facilities are exempt from obtaining a waste tire storage facility registration number from the executive director.

(b) An application for a waste tire storage facility registration number shall be made to the executive director on a form provided by the executive director. The following information shall be provided to the executive director:

(1) the name, mailing address, and telephone number of the property owner of the waste tire storage facility;

(2) the street location of the waste tire storage facility including county;

- (3) the name, mailing address, and telephone number of person making the application;
- (4) the approximate number of whole used or scrap tires or shredded tire pieces (in waste tire units) that will be stored at the waste tire storage facility; and
- (5) the existing land use surrounding the waste tire storage facility.

(c) The application for a waste tire storage facility registration number shall be made to the executive director in writing. The written application must be made on the form provided by the executive director. The waste tire storage facility registration number shall be issued upon receipt and approval of an administratively and technically complete application.

(d) Waste tire storage facilities that have received a registration number and have been classified pursuant to §330.832(b) of this title (relating to Waste Tire Storage Facility Classification) shall be subject to the specific requirements of this subchapter.

(e) Waste tire storage facilities that have received a registration number and have been classified pursuant to §330.832(b) of this title (relating to Waste Tire Storage Facility Classification) shall be limited to a maximum of three piles containing whole used or scrap tires on the ground or an unlimited number of whole used or scrap tires in totally enclosed and lockable containers when the waste tire storage facility is storing such tires for shredding for reimbursement under the WTRF. The piles on the ground shall be sized according to the maximum area and height authorized in §330.835 of this title (relating to Requirements for a Type VIII-R Waste Tire Storage Facility).

(f) A waste tire storage facility shall be inspected to insure compliance with the application by the executive director prior to receiving final approval for storage.

(g) Registration fees.

(1) Individuals or companies that prepare a new, renewed or amended application on forms obtained from the executive director for registration as a waste tire storage facility shall pay a non-refundable application review fee of \$500.

(2) Registration fees collected under this subsection shall be allocated to the commission for its reasonable and necessary costs associated with reviewing applications for the registration of waste tire storage facilities.

Adopted May 29, 1996

Effective July 1, 1996

#### **§330.834. Evidence of Financial Responsibility.**

The applicant seeking registration for a Type VIII-R storage facility shall submit evidence of financial responsibility in conformance with the requirements contained in §§330.885-330.888 of this title (relating to Cost Estimate for Closure; Financial Assurance for Closure; Incapacity of Owners or Operators or Financial Institutions; and Wording of the Instruments).

**§330.835. Requirements for a Type VIII-R Waste Tire Storage Facility.**

(a) Registration requirements.

(1) Persons who store or intend to store more than 500 whole used or scrap tires and/or an equivalent amount of shredded tire pieces on the ground or 2,000 whole used or scrap tires and/or an equivalent amount of shredded tire pieces in a totally enclosed and lockable container shall register these sites with the executive director. Registration forms shall be provided by the executive director upon request. Persons who own or operate a waste tire recycling facility or a waste tire energy recovery facility are not subject to the design, management, and record keeping requirements and conditions contained in this section.

(2) Persons who apply and receive Type VIII-R facility registration from the executive director shall maintain a copy of the registration at their designated place of business and at the designated storage facility location.

(3) A Type VIII-R registration shall expire 60 months from the date of issuance unless the storage site changes ownership prior to that time. A Type VIII-R registration is transferable contingent upon executive director approval. A change in the federal tax identification number will constitute a change of ownership. Registrations shall be renewed prior to the expiration date. Applications for renewal shall be submitted at least 60 days prior to the expiration date of the Type VIII-R storage facility registration.

(4) Type VIII-R storage facility owners and/or operators shall submit an amendment to their application to the commission within 15 days of a change to their registration if:

- (A) any data submitted in support of the application for registration has changed;
- (B) the office or place of business is relocated; or
- (C) the registered name of the facility owner or operator has changed.

(5) A new Type VIII-R storage facility registration application and a non-refundable \$500 application review fee shall be submitted to the executive director within ten days of a determination by the executive director that operations or management methods are no longer adequately described by the existing registration. If ownership of the registered Type VIII-R storage facility will change or the operator of a Type VIII-R storage facility will change notification of the pending change shall occur at least 60 days prior to the actual transfer of ownership or operations. Until the change of ownership and/or operations of the facility is approved in writing by the executive director no WTRF reimbursements will occur.

(6) Suspension, revocation or denial of initial or renewal registration procedures are as follows:

(A) The commission may suspend or revoke a registration or refuse to issue an initial or renewal registration for:

(i) failure to maintain complete and accurate records required under this subchapter;

(ii) failure to maintain on-road vehicles in safe working order as evidenced by at least two citations per vehicle excluding parking citations from the Texas Department of Transportation or local traffic law enforcement agencies;

(iii) altering any record maintained or received by the registrant;

(iv) failure to comply with any rule or order issued by the commission pursuant to the requirements of this subchapter;

(v) failure to submit the annual report required in §330.835(d)(5) of this title (relating to Requirements for a Type VIII-R Waste Tire Storage Facility);

(vi) failure to maintain financial assurance as required in §§330.885-330.888 of this title (relating to Cost Estimate for Closure; Financial Assurance for Closure; Incapacity of Owners or Operators or Financial Institutions; and Wording of the Instruments);

(vii) collection and/or storage of shredded tire pieces or whole used or scrap tires or scrap tire pieces without the registration; and

(viii) altering any documentation used to substantiate a request for reimbursement from the WTRF;

(ix) failure to deliver scrap tires, tire pieces or shredded tire pieces to another registered waste tire storage site, registered waste tire energy recovery facility or registered waste tire recycling facility or other in-state or out-of-state facility approved by the executive director within the time frame specified in §330.832(b)(2) of this title (relating to Waste Tire Storage Facility Classification).

(B) A Type VIII-R storage facility registration shall be suspended for a period of one year; however, depending upon the seriousness of the offense(s), the time of suspension may be increased or decreased. A Type VIII-R storage facility registration is revoked automatically upon a second suspension. If the registration is suspended or revoked, a Type VIII-R storage facility shall not store waste tire shreds or whole used or scrap tires or scrap tire pieces regulated under this subchapter.

(C) The holder of a Type VIII-R storage facility registration that has been revoked by the commission may reapply for registration pursuant to this subchapter as if applying for the first time, after a period of at least one year from the date of revocation. If a Type VIII-R storage facility registration is revoked by the commission a second time, the revocation shall be permanent.

(D) Appeal of suspension, revocation or denial of initial or renewal registration procedures are as follows:

(i) an opportunity for a formal hearing on the suspension or revocation of registration must be requested in writing by the registrant by certified mail, return receipt requested, provided the request is postmarked within 20 days after a notice of proposed revocation or denial of registration has been sent from the executive director to the last known address of the registrant;



(ii) an opportunity for a formal hearing on the denial of registration or renewal of registration must be requested in writing by the applicant by certified mail, return receipt requested, provided the request is postmarked within 20 days after a notice of denial has been sent from the executive director to the last known address listed on the application. If the registration is denied, the individual or company shall not store shredded tire pieces or whole used or scrap tires or scrap tire pieces regulated under this subchapter; and

(iii) the formal hearing under this paragraph shall be in accordance with the requirements of the Administrative Procedures Act, Texas Government Code Annotated, §2001 (Vernon 1993) and the Texas Solid Waste Disposal Act, Texas Health and Safety Code Annotated Chapter 361 (Vernon 1993) and the rules of the commission.

(E) If the registration is suspended or revoked, and a formal hearing has been timely requested by the registrant the Type VIII-R storage facility shall not accept for storage additional shredded tire pieces, whole used or scrap tires or scrap tire pieces regulated under this subchapter until a final decision has been made by the commission as result of the hearing.

(F) If the revocation of the Type VIII-R storage facility registration is approved by the commission, the owner or operator of the facility shall remove all shredded tire pieces and whole used or scrap tires and scrap tire pieces stored at the facility within 60 days from the date of suspension or revocation in accordance with the requirements contained in this subchapter.

(7) Preparation and submission of an application for a Type VIII-R storage facility shall be in accordance with the following procedures:

(A) The application for registration shall be prepared and signed by the applicant on a form to be provided by the executive director. The application shall include information necessary for the executive director to make an evaluation of the proposed operation to ensure that the facility is located, designed, and operated so that the health, welfare, and physical property of the public as well as the environment and endangered species are protected. Failure to submit complete information as required by these sections shall result in the return of the application to the applicant without further action by the executive director. The submission of false information shall constitute grounds for denial of the initial or renewal application or suspension or revocation of the current Type VIII-R storage facility registration.

(B) The application for a registration of a Type VIII-R storage facility shall be submitted in duplicate to the executive director with all supporting data also submitted in duplicate unless otherwise directed by the executive director. Within 30 days of receipt of the application, the executive director will forward to the applicant a letter acknowledging receipt of the application.

(C) Data presented in support of an initial or renewal application for a Type VIII-R storage facility shall consist of:

(i) the legal name, address and federal tax identification number of the individual, partnership, corporation, city, county or other governmental entity that is applying for the registration and will be responsible for operations at the Type VIII-R storage facility;

(ii) the legal name and address of landowner where the Type VIII-R storage facility will be or is currently located;

(iii) the current status of the Type VIII-R storage facility; (i.e. proposed or existing);

(iv) the specific location of the Type VIII-R storage facility by street address, if within the city limits, or distance and direction from a city corporate limits or road intersection. The Type VIII-R storage facility location shall be further described by giving the direction (using compass headings as N, NE, E, etc.) and distance measured perpendicularly (in feet or miles), unless otherwise noted, from each Type VIII-R storage facility boundary to a known physical feature (such as a road, highway, canal, creek, etc.);

(v) the location of the Type VIII-R storage facility by county, or extraterritorial jurisdiction of a city;

(vi) the estimated number of whole used or scrap tires or shredded tire pieces to be received daily;

(vii) the size of the Type VIII-R storage facility in acres;

(viii) the maximum number of whole used or scrap tires or shredded tire pieces to be stored at the Type VIII-R storage facility;

(ix) the intended purpose of the whole used or scrap tires or shredded tires pieces stored at the Type VIII-R storage facility;

(x) the time period that the whole used or scrap tires or shredded tire pieces will be stored at the Type VIII-R storage facility (not to be in excess of 12 months unless written authorization for a longer storage period has been granted by the executive director);

(xi) the storage method (tire pile on the ground, inside a building or enclosure, totally enclosed and lockable containers);

(xii) a topographic map which shall be a United States Geological Survey 7-1/2 minute quadrangle sheet or equivalent, encompassing the area of the site and showing the location of area streams (particularly those entering and leaving the site), and marked to show the Type VIII-R storage facility boundaries, and roadway access. These maps may be obtained at a nominal cost from: Branch of Distribution, United States Geological Survey Federal Center, Denver, Colorado 80225;

(xiii) a general location map, which shall be all or a portion of a half-scale county map, prepared by the Texas Department of Transportation, annotated as necessary to show the location of the Type VIII-R storage facility; prevailing wind direction; residences, cemeteries, and recreational areas within a one mile radius of the Type VIII-R storage facility and location and type of surface of all roads within a one mile radius which will be used for entering or leaving the Type VIII-R storage facility. If only a portion of the map sheet is used, the portion shall include scale, date, north arrow, and two or more latitudes and longitudes. These

maps may be obtained at a nominal cost from the nearest District Highway Engineer Office or by writing to: Texas Department of Transportation, Attention: Transportation Planning Division (D-10), P. O. Box 5051, West Austin Station, Austin, Texas 78763-5051;

(xiv) a statement from the property owner shall be submitted on a form prepared by the executive director when the applicant is not a city, county, state agency, federal agency, or other governmental entity and is not the owner of record of the land described in the application, or does not have an option to buy the land. The statement shall be witnessed and notarized;

(xv) a Type VIII-R storage facility layout plan showing location of the storage areas, oversize tires that qualify for WTRF reimbursement, and oversize tires that do not qualify for reimbursement, fire lanes, access roads (internal and external), fire control facilities, facility security and fencing, maintenance and control buildings, sanitation facilities, location and description of the type of tire processing equipment to be used, other operational buildings to be located on the Type VIII-R storage facility, and current dated signature of the fire marshal within whose jurisdiction the waste tire storage facility is located;

(xvi) a drainage plan showing drainage flow throughout the Type VIII-R storage facility area, specifically the potential for contaminated storm water run-off from storage piles, or wastewater run-off from areas of the waste tire storage facility where equipment is operated or stored; locations of streams; and any other important drainage feature of the facility. Any additional surface drainage controls that are necessary to ensure facility containment and treatment of potentially contaminated storm water or wastewater shall be designed by a registered professional engineer. If, during review of the application or after issuance of the registration, a detailed drainage plan is determined to be required, then it shall be prepared, signed, and sealed by a registered professional engineer within the time period requested by the executive director;

(xvii) a legal description of the Type VIII-R storage facility consisting of the official metes and bounds description including the volume and page number of the deed record, or if platted property, the book and page number of the plat record of only that acreage encompassed in the application;

(xviii) a Type VIII-R storage facility operating plan containing information outlined in subsection (c) of this section;

(xix) an applicant's statement and signature provided by the applicant, or the authorized representative empowered to make commitments for the applicant, that he/she is familiar with the application and all supporting data and is aware of all commitments represented in the application and that he/she is also familiar with all pertinent requirements in these regulations and he/she agrees to develop and operate the Type VIII-R storage facility in accordance with the application, the sections in this subchapter, and any special provisions that may be imposed by the executive director; and

(xx) a Type VIII-R storage facility fire plan containing information outlined in subsection (c)(3) of this section.

(b) Design requirements for Type VIII-R waste tire storage facility.

(1) A Type VIII-R waste tire storage facility shall be designed so that the health, welfare and safety of operators, transporters, and others who may utilize the Type VIII-R waste tire storage facility are maintained.

(2) Scrap tires or shredded tire pieces may be stored using outside tire piles, inside storage, or lockable containers, or a combination of any of the aforementioned methods.

(A) Tire piles consisting of scrap tires or shredded tire pieces shall be no greater than 15 feet in height nor shall the pile cover an area greater than 8,000 square feet. The executive director may grant a variance from the 8,000 square foot pile size requirement on a case-by-case basis. In order for the applicant to be granted a variance, the applicant must demonstrate to the satisfaction of the executive director that the increased size of the piles requested in the variance is adequate for fire fighting purposes and meets the other applicable requirements of this subchapter. The variance shall include the fire marshal's current dated signature on the site layout plan and a letter stating that fire protection is adequate for the increased pile size. If an existing facility requests a variance to increase pile size, the applicant must comply with public notice requirements contained in §330.873 of this title (relating to Public Notice of Intent to Operate). The executive director will receive public comments in consideration of the applicant's variance request.

(B) Scrap tires or shredded tire pieces may be stored in any enclosed building or other type of covered enclosure. Where applicable, local fire prevention codes must be met and appropriate precautions taken. Inside storage piles or bins shall not exceed 12,000 cubic feet with a 10 foot aisle space between piles or bins.

(C) Scrap tires or shredded tire pieces may be stored in trailers provided the trailer is totally enclosed and lockable and shall not be capable of containing more than 2,000 scrap tires or equivalent number of shredded tire pieces.

(3) Outside piles consisting of scrap tires or shredded tire pieces and entire buildings used to store scrap tires or shredded tire pieces shall not be within 20 feet of the property line or easements of the Type VIII-R storage facility. This setback line shall be kept open at all times and maintained free of rubbish, equipment, tires, or other materials. The executive director may grant a variance to the 20-foot property line or easement requirement on a case-by-case basis in cases of unusual building codes or site conditions. In order for the applicant to be granted a variance, the applicant must demonstrate to the satisfaction of the executive director that the distance that is the subject of the variance is adequate for fire fighting purposes and meets the other applicable requirements of this subchapter. In the event that a variance for supersize piles is approved by the executive director, the minimum setback from property lines or easements will be 40 feet; however, the existing property line or easement variance requirement remains in effect.

(4) Scrap tires shall be split, quartered, or shredded within 90 days from the date of delivery to the Type VIII-R storage facility. Off-the-road tires that are used on heavy machinery, including earthmovers, loader/dozers, graders, and mining equipment are exempt from this requirement. Truck and agricultural implement tires shall not be classified as off-the-road tires and thus are not exempt from this requirement. Appropriate vector controls shall be used at a frequency based upon type and size of piles, weather conditions and other applicable local ordinances.

(5) There shall be a minimum separation of 20 feet between outside tire piles consisting of scrap tires or shredded tire pieces. This 20-foot space shall be designated as a fire lane that totally encircles the tire piles and shall be an all-weather road. Provisions shall be made for all-weather access from publicly-owned roadways to the scrap tire storage site, and from the entrance of the site to unloading and storage areas used during wet weather. The design (a cross-section), location, maintenance, and all-weather serviceability of interior access roads/fire lanes shall be addressed in the overall facility design and in the Site Operating Plan, and shall be indicated on the Site Layout Plan with appropriate design notes. An estimate shall be provided of the number, size, and maximum weight of vehicles expected to use the site daily. At a minimum, these roadways shall have minimum 25-foot turning radii, shall be capable of accommodating firefighting vehicles during wet weather, and shall meet applicable local requirements and specifications. The open space between buildings and outside tire piles consisting of scrap tires or shredded tire pieces shall be a minimum of 20 feet and kept open at all times and maintained free of rubbish, equipment, tires, or other materials. In the event that a variance for supersize piles is approved by the executive director, the minimum fire lane separation will be at least 40 feet; however, upon coordination with the local fire marshal, the distance may be increased as necessary to protect human health and safety.

(6) The Type VIII-R storage facility shall be completely enclosed with a chain-link type security fence at least six feet in height with no less than three strands of barbed wire encircling the top of the fence with lockable gates. Storage buildings or enclosures not enclosed with a chain-link type security fence shall be secured by lockable doors. Waste tire storage facilities shall be kept locked during all non-operational hours.

(7) The Type VIII-R storage facility shall have an adequate fire protection system using fire hydrants or a firewater storage pond or tank at the facility. The capacity of a firewater storage pond or tank shall be of sufficient size for firefighting purposes and shall be in conformance with all local and state fire code requirements. The fire marshal within whose jurisdiction the waste tire storage facility is located shall approve the fire protection system. A letter approving the fire protection system and site layout plan from the fire marshal shall be included in the application for waste tire storage facility registration which states that the fire marshal reviewed the application and has approved the fire protection aspects of the application and the design of the all-weather roads to accommodate fire fighting vehicles which would be utilized to fight fires at the site. The fire marshal shall sign and date the submitted site layout plan.

(8) The Type VIII-R waste tire storage facility shall have a large capacity carbon dioxide or dry chemical fire extinguisher(s) located in strategically-placed enclosures throughout the entire site. Fire extinguishers used at waste tire storage facilities with inside and outside storage should be equally spaced within the facility to provide quick access from any location within the facility. The minimum spacing between fire extinguishers, inside and outside, shall be 100 feet. The minimum number of fire extinguishers or fire hydrants for each waste tire storage facility shall be one per acre.

(9) If required, suitable drainage structures or features shall be provided to divert the flow of rainfall run-off or other uncontaminated surface water within the Type VIII-R storage facility to a location off-site.

(10) Each site shall conspicuously display at the entrance a sign at least 1 and 1/2 feet by 2 and 1/2 feet in size with clear, legible letters stating the name of the Type VIII-R storage facility using the words "waste tire storage facility", the registration number, and operating hours.

(11) A Type VIII-R storage facility located within a designated floodplain area shall provide adequate protection levees or dikes to prevent the discharge off-site of any contaminated material stored within the Type VIII-R storage facility.

(12) The Type VIII-R storage facility shall be designed in accordance with all local building codes, fire codes, or other appropriate local codes.

(13) All oversized tires must be weighed in separately from other tires and stored in separate piles if the oversized tires do not qualify for reimbursement from the WTRF.

(c) Type VIII-R waste tire storage facility operating plan.

(1) The purpose of the Type VIII-R storage facility operating plan is to provide specific guidance and instructions for the management and operation of a Type VIII-R waste tire storage facility. The operating personnel shall have instructions in sufficient detail to enable them to conduct day-to-day operation in a manner consistent with the design of the Type VIII-R storage facility and the requirements contained in this subchapter.

(2) The Type VIII-R storage facility operating plan shall include guidance or instructions on the following:

(A) security, facility access control, the hours and days during which tire-hauling vehicles will be accepted, traffic control, and safety;

(B) sequence of the development of the Type VIII-R storage facility such as utilization of storage areas, drainage features, firewater storage ponds, trenches, and buildings;

(C) control of loading and unloading of whole used or scrap tires or shredded tire pieces within designated areas so as to minimize operational problems at the Type VIII-R storage facility;

(D) fire prevention and control plans outlined in detail in paragraph (3) of this subsection, and special training requirements for fire-fighting personnel that may be called for assistance;

(E) vector control procedures for any type of vector that may be found at the Type VIII-R storage facility;

(F) a procedure for removal of any waste material that is not a whole used or scrap tire or shredded tire piece to a disposal facility permitted by the commission. This procedure must include the means to be used for removal of the waste material illegally deposited at the Type VIII-R storage facility. In all cases, such waste shall be removed from the storage area immediately and placed in suitable collection bins or be returned to the transporter's vehicle and removed from the Type VIII-R storage facility. Collection bins must be emptied at least weekly, depending on the amount and type of unauthorized waste. The equipment necessary to meet this objective shall be specified in the design requirements and shall be on site and operable during operating hours;

(G) a facility employee shall be designated by the owner or operator to inspect each load of whole used or scrap tires or shredded tire pieces that is delivered to the Type VIII-R storage facility. The employee shall have the authority and responsibility to reject unauthorized or improperly manifested loads, or loads that contain whole used or scrap tires that were obtained from wholesale or retail dealers of new tires by charging such individuals or companies for the collection of those tires. The employee shall also be authorized to have unauthorized materials removed by the transporter, assess appropriate disposal fees, and have any unauthorized material removed by on-site personnel. The name of the designated employee shall be provided to the executive director by the owner or operator of the facility;

(H) a procedure whereby the transporter manifest required by §330.807 of this title (relating to Generator Record Keeping), the daily log and other required documents shall be maintained at the Type VIII-R storage facility for a period of three years and be made available for inspection by the executive director or authorized agents or employees of local governments having jurisdiction to inspect the storage facility;

(I) dust and mud control measures for access roads, fire lanes, and storage areas within the Type VIII-R storage facility;

(J) posting of signs and enforcement of Type VIII-R storage facility rules;

(K) wet-weather operations;

(L) preventive maintenance procedures for all storage areas, tire processing equipment, fire lanes, fire control devices, drainage facilities, access roads, buildings, and other structures on the Type VIII-R storage facility in use during the active operating period of the Type VIII-R storage facility. A schedule shall be established for periodic inspection of all equipment and facilities to determine if unsatisfactory conditions exist;

(M) incorporation of other instructions as necessary to ensure that the Type VIII-R storage facility personnel comply with all of the operational standards for the facility; and

(N) the waste tire storage facility owner or operator shall conduct a training program on a quarterly basis, for all waste tire storage facility employees that transport or handle whole used or scrap tires or shredded tire pieces. This training program shall address the review and proper completion of manifest forms prior to the transportation of whole used or scrap tires from a generator, or the acceptance of whole used or scrap tires or shredded tire pieces at the waste tire storage facility. Transporters not employed by the waste tire storage facility but that deliver whole used or scrap tires or shredded tire pieces to the waste tire storage facility shall be required to attend a training and orientation program to familiarize the transporter with facility operational guidelines and requirements, the acceptable procedures for the collection and transportation of whole used or scrap tires from a generator (specifically when a collection fee can or cannot be charged), the proper completion of a manifest form, and the rules and regulations under which all aspects of the generation, transportation, processing, storage, and disposal of whole used or scrap tires or shredded tire pieces are governed. A waste tire storage facility owner or operator shall submit written documentation to the executive director indicating that the training and orientation programs required in this section, have been completed. This written documentation shall be submitted by the waste tire storage facility owner or operator to the executive director within 10 days of completion of the training and orientation program.

(3) The Type VIII-R storage facility FIRE PLAN and all revisions shall be maintained at the site, with copies provided to all local fire departments and other emergency response teams, and shall include guidance or instruction on the following:

(A) roles to be assumed by on-site personnel (example: fire-fighting coordinator, equipment custodian, hose operator, etc.) in the event of a fire, duty stations, and procedures to be followed by these persons;

(B) arrangements agreed to by local fire departments, police departments, hospitals, contractors, nearby businesses and industries that can be called for assistance, and State and local emergency response teams (in this regard, a letter should be obtained from each of these entities and included in the FIRE PLAN that acknowledges that they have received a copy of the FIRE PLAN, that they understand their part in the plan, and that they agree to do whatever it is that they have agreed to do);

(C) names, addresses, and telephone numbers of these emergency response teams (fire, police, medical, etc.) that are included in the plan (in this regard, the FIRE PLAN must include a map of the general area of the site that shows the site location, the location of the emergency response teams included in the plan (fire stations, police stations, hospitals, etc.), and the best route for these emergency response teams to take from their location to the site location);

(D) names, addresses, and telephone numbers of all site employees that are qualified to act as emergency coordinator(s) (this list must be kept up to date, and where more than one person is listed one must be designated as primary coordinator and the others as alternates);

(E) a list of all emergency equipment at the facility (fire extinguishers, protective clothing items, hoses, pumps, axes, shovels, detention ponds, water storage tanks, fire hydrants, signal and alarm system equipment, decontamination equipment, etc.), a copy of the Site Layout Plan (to be posted at several prominent locations on the site as well as included in the FIRE PLAN) drawing that clearly marks the location of these items as well as personnel assembly points and evacuation routes from the site and from buildings on the site, and a narrative description of where these items are kept or located on site as well as a description of how the items are used (if applicable) and their capabilities;

(F) an evacuation procedure for facility personnel where there is a possibility that evacuation could be necessary, evacuation routes, alternate routes, and signals to be used by the emergency coordinator(s) for the various necessary procedures; and

(G) information about pollution legal liability insurance, environmental impairment insurance, and any other insurance held by the company that would cover fire damage, loss, and cleanup.

(d) Type VIII-R waste tire storage facility record keeping.

(1) General requirements.

(A) The executive director approved Type VIII-R storage facility layout plan, Type VIII-R storage facility operating plan, and all supporting data to the application, is an operational requirement.



Any significant deviation as determined by the executive director, from any part of the site layout plan or operating plan or other supporting data without prior approval from the executive director shall be a violation of this subchapter.

(B) A copy of the registration with all supporting data, including the approved Type VIII-R storage facility layout plan, the approved Type VIII-R storage facility operating plan, and the commission's current rules shall be on-site at all times. The facility supervisor shall be knowledgeable of current commission rules and contents of the approved Type VIII-R storage facility application in relation to the operational requirements of the specific Type VIII-R storage facility.

(C) All drawings or other sheets prepared for revisions to a Type VIII-R storage facility layout plan or other previously approved documents, which may be required by this subchapter, shall be submitted in duplicate.

(2) Daily log. Persons that store whole used or scrap tires or shredded tire pieces subject to control under this subchapter shall maintain a record of each individual delivery and removal. Such record shall be in the form of a daily log or other similar documentation approved by the executive director. The daily log shall include, at a minimum, the:

(A) name and commission registration number of the waste tire storage facility;

(B) physical address of the Type VIII-R storage facility;

(C) number of whole used or scrap tires or shredded tire pieces received at the Type VIII-R storage facility;

(D) number of whole used or scrap tires or shredded tire pieces, removed from the Type VIII-R storage facility (for disposal, resale, recycling, reuse or energy recovery);

(E) specific location in the Type VIII-R storage facility (i.e., tire pile number, bin number, building number, etc.) where whole used or scrap tires or shredded tire pieces are delivered or removed (for disposal, resale, recycling, reuse or energy recovery);

(F) description of specific events or occurrences at the Type VIII-R storage facility relating to routine maintenance, fires, theft, spraying for vectors, observations of vectors or evidence of vectors, or other similar events or occurrences;

(G) number of whole used or scrap tires being held for resale, adjustments, or other purposes;

(H) name and signature of facility representative acknowledging truth and accuracy of the daily log; and

(I) the name, address, telephone number, and date of the individual or company delivering or removing the whole used or scrap tires or shredded tire pieces to or from the Type VIII-R waste tire storage facility.

(3) Manifests. The Type VIII-R storage facility operator shall retain all manifests received from a waste tire facility or waste tire transporter for scrap tires or shredded tire pieces delivered to the Type VIII-R storage facility or removed from the Type VIII-R storage facility. The Type VIII-R waste tire storage facility shall ensure that the top original of the five-part manifest shall be returned to the generator completely filled out within 90 days of the date and time of collection as indicated in Section 1 of the manifest form.

(4) Maintenance of records and reporting. The Type VIII-R storage facility operator shall retain an original of all records showing the collection and disposition of the whole used or scrap tires or shredded tire pieces. Such records shall be retained for three years and made available for review to the executive director upon request.

(A) Any change made to the face of an original record shall be made by drawing a single line through the item being changed, ensuring that such item remains legible and readable. To the side of such mark, the person making the change shall place his/her initials with the date of such change.

(B) Any change made to the face of an original record and made in accordance with subparagraph (A) of this paragraph shall be accompanied by a written justification stating the reason and purpose for the change. This written justification shall be attached to the original record and maintained in the same manner set forth in subsection (a) of this section for a period of three years. The justification shall include the date of the change, the full name and position of the individual making the change, and the justification shall be prepared simultaneously with the change to the original records.

(C) Should the executive director identify discrepancies/errors in records, and opportunity will be given to the mobile tire processor or waste tire facility to justify, in writing, any such errors or discrepancies. However, the executive director shall determine whether any written justification is adequate for the purposes of reimbursement.

(5) Annual report. The Type VIII-R storage facility owner or operator shall submit to the executive director an annual summary of their activities through December 31 of each year showing the number of whole used or scrap tires or shredded tire pieces delivered, the disposition of whole used or scrap tires or shredded tire pieces, and the number of whole used or scrap tires or shredded tire pieces removed from the facility. The annual report shall be submitted no later than March 1 of the year following the end of the reporting period. The annual report shall be prepared on a form provided by the executive director.

(e) Local ordinances. Where local ordinances require controls and records substantially equivalent to or more stringent than the requirements of this subchapter, the Type VIII-R waste tire storage facility owner or operator shall use such controls and records to satisfy the commission's requirements, upon review and approval by the executive director.

**§330.836. Delivery Requirement.**

Owners and operators of Type VIII-R waste tire storage facilities from which scrap tires or shredded tire pieces are removed shall ensure delivery to a registered waste tire facility, waste tire storage facility, waste tire recycling facility, waste tire energy recovery facility, or other in-state or out-of-state facility approved by the executive director.

Adopted May 29, 1996

Effective July 1, 1996

**§330.838. Requirements for a Type VIII-W.T. Waste Tire Storage Facility.**

(a) Persons that intend to store scrap tires in quantities less than 500 scrap tires on the ground or 2,000 scrap tires in a totally enclosed and lockable container at any given time may do so without obtaining a permit or registration from the commission.

(b) Persons who operate a Type VIII-W.T. storage facility shall monitor the facility for vectors and shall utilize a vector control system to control the presence and occurrence of vectors on an as needed basis.

(c) Scrap tires stored in a Type VIII-W.T. storage facility shall be removed at least once every 90 days or when the accumulated number of scrap tires nears the 500 limit on the ground or nears the 2,000 limit in a totally enclosed and lockable container.

Adopted May 29, 1996

Effective July 1, 1996

**§330.840. Penalties for Owners or Operators of Waste Tire Storage Facilities.**

An owner or operator of a registered waste tire storage facility that violates the requirements of this subchapter shall be subject to any action authorized by law to secure compliance, including the assessment of administrative penalties or civil penalties as prescribed by law.

**§330.841. Waste Tire Facility Processors of Scrap Tires.**

(a) The regulations contained in these sections establish standards for and apply to both fixed and mobile registered shredders seeking reimbursement under the WTRF.

(b) All persons who operate a waste tire facility shall be responsible for obtaining all necessary and appropriate state and local permits, licenses, or registrations required, and operate in compliance with such permits, licenses, or registrations, or other applicable state and local codes.

(c) Each waste tire facility that participates in the WTRF program and receives reimbursement from the WTRF shall be responsible for ensuring that the shredded tire pieces generated at the waste tire facility have been delivered to a registered waste tire storage facility, waste tire recycling facility, waste tire energy recovery facility, or other entity that has been as a legitimate end user by the executive director in accordance with applicable sections of this subchapter.

(d) Waste tire facilities that participate in the WTRF program shall not charge a fee to retail or wholesale dealers for collecting for delivery to a processing facility or for collecting and shredding scrap tires accepted for temporary storage by the dealer from the purchasers of tires on or after April 1, 1992. This prohibition does not apply to the collecting and shredding of scrap tires from manufacturers, retreaders, fleet operators, automotive dismantlers, and storage site owners or operators of scrap tires.

(e) Waste tire facilities that are not seeking reimbursement from the WTRF for the shredding of scrap tires are not required to obtain a registration from the executive director authorizing the use of fixed processing equipment for the shredding of such tires.

(f) The executive director shall determine whether an entity identified by a waste tire facility constitutes a legitimate end user.

(g) Effective January 1, 1994, and on a semiannual basis thereafter, waste tire facilities shall report their recycling, reuse, and energy recovery activities to the executive director. The semi-annual report shall be prepared on a form provided by the executive director, and at a minimum the following information shall be required in the report:

(1) the name, physical address, mailing address, county and telephone number of the waste tire facility;

(2) the name, physical address, mailing address, county and telephone number of partners, corporate officers, and directors;

(3) a listing of all registered waste tire recycling facilities or waste tire energy recovery facilities where the waste tire facility delivered scrap tires or shredded tire pieces during the preceding six months, where the waste tire facility currently delivers the scrap tires or shredded tire pieces and where the waste tire facility anticipates delivery of scrap tires or shredded tire pieces during the upcoming six months. Each waste tire recycling facility or waste tire energy recovery facility listed shall include the following information:

(A) name of responsible person, partners, corporate officers, and directors;

(B) phone number of company and responsible person;

(C) physical address and mailing address of the waste tire recycling facility or waste tire energy recovery facility;

(D) detailed description of process to recycle, reuse or recover the energy from the shredded tire pieces;

(E) copies of contracts and agreements between the waste tire facility and the waste tire recycling facility or waste tire energy recovery facility for the recycling, reuse or energy recovery for the scrap tires or shredded tire pieces;

(F) exact quantities, by month, (in number of tires or weight of shredded tire pieces) that the waste tire facility delivered to the registered waste tire recycling facility or waste tire energy recovery facility;

(G) the duration of the contract or agreement and the total material intended to be delivered;

(4) a complete description of additional activities in which the waste tire facility is currently involved that may be classified as encouraging or promoting the growth of additional recycling, reuse, or energy recovery facilities in the state, or assisting in the expansion of existing recycling, reuse, or energy recovery facilities in the State; and

(5) any information considered confidential shall be so indicated on each page of the report and submitted with a cover letter requesting that it remain confidential. Such request shall be recognized as confidential pursuant to §330.875 of this title (relating to Confidentiality).

(h) The commission each month shall pay a waste tire facility that shreds scrap tires and scrap tire pieces and meets the requirements of this subchapter an amount equal to \$.80 for each weighed tire unit shredded by the waste tire facility during the preceding calendar month. The executive director may not expend more than \$15.2 million annually to waste tire facilities that conduct registered shredding activities.

(i) The expenditure limit set forth in subsection (h) of this section may be modified by action of the commission pursuant to §330.877 of this title (relating to Transfer of Appropriated Funds Within the WTRF).

(j) Effective September 1, 1995, the commission shall reimburse a waste tire facility \$.85 for each weighed tire shredded if the commission determines that the waste tire facility has a binding agreement to deliver 100% of the scrap tires shredded monthly to an entity that recycles or uses the shreds for energy recovery. Prior to approving the \$.85 reimbursement rate, the executive director shall verify that the waste tire facility has made delivery of shredded tires to the identified end use market. The \$.85 reimbursement rate applies only to waste tire facilities registered by January 1, 1995 and for which the executive director verified the existence of the end use market by June 1, 1995.

(k) Unpaid carryover, accumulated prior to September 1, 1995, for tires shredded in excess of allocations, shall be reimbursed to waste tire facilities as soon as practicable after September 1 of each fiscal year during the 1996-1997 biennium, up to \$1.4 million. The reimbursement will be made annually on a percentage basis.

(l) After January 1, 1996, process wire, wire bead, fluff, and material, other than rubber, that is generated as waste by-product from the shredding process must be recycled, reused or used for energy recovery in order for the waste tire facility to receive reimbursement for its weight.

(m) Waste tire facilities shall provide manifests to registered generators in order that they may initiate the manifest for each individual load of whole used or scrap tires hauled off-site from their business location.

**§330.842. Waste Tire Facility Classification and Operation.**

(a) A waste tire facility shall contain equipment that will shred scrap tires and/or reduce the scrap tire to an industry standard two-inch minus particle size or, if approved by the executive director, shredded to an alternative particle size set by a contract requirement related to recycling or end use of the particles.

(b) A waste tire facility shall be operated in accordance with the provisions contained in this subchapter.

(c) Waste tire shredding or reduction equipment shall be equipped with or shall have access to a scale that is either certified annually by the weights and measures section of the Texas Department of Agriculture (TDA) or certified on a quarterly basis by the manufacturer that developed and installed the scale. All shredded tire pieces for which WTRF reimbursement is being sought and is not weighed on a scale directly attached to the shredder conveyor belt, shall be shredded directly into a container capable of being transported by a truck to a weigh station. All loaded containers shall be weighed by the end of each shredding shift. A daily shredding log shall be maintained identifying the numbers on the weigh tickets for all of the containers weighed during each shift to identify weigh tickets associated with a specific shredding time frame. Reimbursement from the WTRF shall be based on the after shredded weight of the scrap tire or scrap tire piece. Any scale that is not certified by the TDA shall be supported with documentation as to why it cannot be certified by TDA and calibration documentation equivalent to the TDA documentation shall be obtained from the manufacturer of the scale.

(d) The waste tire facility shall notify the executive director in writing of the name and location of the certified weigh scale used for weighing the shredded tire pieces. The waste tire facility shall limit their use to only the weigh scale identified in writing. In the event that the identified scale can not be used to weigh shredded tire pieces for the purpose of WTRF reimbursement, the waste tire facility shall notify the executive director of that fact and inform the executive director of the name and location of the replacement scale within ten days.

(e) For the purposes of this subchapter, the waste tire facility shall determine the tare weight for each truck and trailer combination used to weigh shredded tire pieces for WTRF reimbursement on a daily basis. The gross, tare and net weight for the truck and trailer combination, and the truck and trailer combination with shreds shall be determined by the weigh scale identified in subsection (d) of this section and shall be mechanically printed on the weigh ticket. In the event the weigh scale is not capable of weighing the truck and trailer combination, the truck and trailer must be unhooked before a separate weight for each can be obtained. The date and time of all weighing activity must also be mechanically printed on the weight ticket and the public weigh station must be manned by a public weigher or deputy public weigher during hours of operation.

(f) The priority enforcement list site tire shreds shall be weighed separately and weight documentation shall identify the shreds as priority enforcement list. In addition, the waste tire facility will weigh the PEL scrap tires or scrap tire pieces coming from PEL sites separately as incoming tires.

Adopted May 29, 1996

Effective July 1, 1996

**§330.843. Waste Tire Facility Registration.**

(a) Persons that process whole used or scrap tires at a waste tire facility shall obtain a registration number from the executive director for the operation of the waste tire facility. The registration number assigned

to the waste tire facility shall be stenciled on each piece of mobile shredding equipment owned by the waste tire facility.

(b) Waste tire facilities shall register their operation with the executive director prior to commencing operations. An application for registration shall be made on a form provided by the executive director upon request. The following registration information must be provided to the executive director:

- (1) the name, physical address, mailing address, county, and telephone number of applicant;
- (2) the name, mailing address, and telephone number of partners, corporate officers, and directors;
- (3) a description of the vehicles or equipment to be registered, including the:
  - (A) make, model, and year of the vehicle or equipment;
  - (B) name of the vehicle or equipment owner;
  - (C) vehicle license plate (tag number) including state and year, if applicable;
  - (D) rated capacity of each piece of equipment or vehicle;
  - (E) type of equipment or vehicle; and
  - (F) area within Texas that the permanent shredding equipment will be located;
- (4) the anticipated number of whole used or scrap tires to be split, quartered, or shredded per year;
- (5) a metes and bounds description of the site location of the facility; and
- (6) financial assurance as referenced in §§330.885-330.888 of this title (relating to Cost Estimate for Closure; Financial Assurance for Closure; Incapacity of Owners or Operators or Financial Institutions; and Wording of the Instruments).

(c) Persons who apply to the executive director for registration and receive the registration shall maintain a copy of the registration form containing their assigned registration number at their designated place of business and in each vehicle used to transport whole used or scrap tires or shredded tire pieces to or from their waste tire facility.

(d) A waste tire facility registration shall expire 60 months after the date of issuance. A waste tire facility registration is required to be renewed prior to the expiration date.

(e) A waste tire facility shall provide written notice and a revised application for registration to the executive director within 15 days of any change to the registration if:

(1) the number of whole used or scrap tires handled or total waste tire facility operation has expanded by 50% over that originally registered;

(2) the office or place of business is relocated;

(3) the registered name of the waste tire facility has changed;

(4) the amount of tire shredding equipment has increased; or

(5) the intended area of the waste tire facility's operation has changed.

(f) A new registration application shall be submitted to the executive director within ten days of a determination by the executive director that operation or management methods are no longer adequately described by the existing registration. If ownership of the registered waste tire facility will change or the location of the equipment or facility will change, notification of the pending change shall occur at least 30 days prior to the actual transfer of ownership or operations. Until the change of ownership and/or operations of the facility is approved in writing by the executive director no reimbursements will occur. A change in the federal tax identification number will constitute a change of ownership.

(g) Suspension, revocation or denial of initial or renewal registration procedures are as follows:

(1) The commission may suspend or revoke a registration, or deny the issuance of an initial or renewal registration for:

(A) failure to maintain complete and accurate records pursuant to §330.845 of this title (relating to Waste Tire Facility Record Keeping);

(B) failure to maintain equipment in safe working order;

(C) altering any record maintained or received by the registrant;

(D) delivery of shredded tire pieces to a facility not registered or permitted by the commission to handle the material;

(E) failure to comply with any rule or order issued by the commission pursuant to the requirements of this chapter;

(F) failure to submit annual reports as required by §330.845(d) of this title (relating to Waste Tire Facility Record Keeping);

(G) failure to maintain financial assurance as required in §§330.885-330.888 of this title (relating to Cost Estimate for Closure; Financial Assurance for Closure; Incapacity of Owners or Operators or Financial Institutions; and Wording of the Instruments);



(H) failure to operate a registered waste tire processing facility within 180 days of receipt of registration from the executive director, or cessation of the processing operation for longer than 180 days after commencing processing of scrap tires at the facility;

(I) collection and/or shredding of whole used or scrap tires without registration as required in this section;

(J) failure to deliver shredded tire pieces to a registered waste tire facility or a recycling, reuse, or energy recovery facility as required in §330.841(c) of this title (relating to Waste Tire Facility Processors of Scrap Tires);

(K) altering any request for reimbursement from the WTRF;

(L) failure to complete the work required to clean up a PEL site as stated in the executive director approved Site Clean-Up Plan;

(M) failure to account to the executive director for recycling, reuse, or energy recovery activities in the required five year period;

(N) knowingly accepted out-of-state scrap tires on a manifest using a commission approved transporter or generator number;

(O) failure of a new or expanded waste tire facility, approved after September 1, 1995, to provide certification that the waste tire facility is capable of collecting and transporting waste tires from registered generators in rural counties of the state at the request of the commission during emergency periods as defined by the commission;

(P) failure of a new or expanded waste tire facility, approved after September 1, 1995, to collect waste tires from generators located in rural counties during commission declared emergency periods; or

(Q) failure to have a binding agreement with authorized legitimate end users.

(2) A waste tire facility registration shall be suspended for a period of one year; however, depending upon the seriousness of the offense(s), the time of suspension may be increased or decreased. A waste tire facility registration is revoked automatically upon a second suspension. If the registration is suspended or revoked, a waste tire facility shall not shred any whole used or scrap tires regulated under this subchapter.

(3) The holder of a waste tire facility registration that has been revoked by the commission may reapply for registration pursuant to this subchapter as if applying for the first time, after a period of at least one year from the date of revocation. If a waste tire facility registration is revoked by the commission a second time, the revocation shall be permanent.

(4) Appeal of suspension, revocation or denial of initial or renewal registration procedures are as follows:

(A) An opportunity for a formal hearing on the suspension or revocation of registration may be requested in writing by the applicant by certified mail, return receipt requested, provided the request is postmarked within 20 days after a notice of proposed suspension or revocation or denial of the initial or renewal registration has been sent from the executive director to the last known address of the applicant.

(B) An opportunity for a formal hearing on the denial of initial registration or renewal of registration may be requested in writing by the applicant by certified mail, return receipt requested, provided the request is postmarked within 20 days after a notice of denial of initial or renewal registration has been sent from the executive director to the last known address listed on the application. If the registration is denied, a person shall not process whole used or scrap tires regulated under this subchapter.

(C) The formal hearing under this paragraph shall be in accordance with the requirements of the Administrative Procedure Act, Texas Government Code Annotated, §2001 (Vernon 1993), the Texas Solid Waste Disposal Act, Texas Health and Safety Code Annotated, Chapter 361 (Vernon 1993), and the rules of the commission.

(h) A waste tire facility shall be inspected to insure compliance with the application by the executive director prior to receiving final approval for storage.

(i) Effective January 1, 1996, all existing, new, amended, and renewal waste tire facility registration applications shall contain requirements for the applicant to identify the entity registered pursuant to §330.852 of this title (relating to Requirements for Registration for a Waste Tire Recycling Facility) or §330.855 of this title (relating to Requirements for Registration for a Waste Tire Energy Recovery Facility) that intends to accept for recycling or energy recovery, the waste tire facility's shredded tire pieces. The executive director shall only reimburse a waste tire facility for those shredded tire pieces that have been delivered to, or have been contracted for delivery to a registered waste tire recycling facility or waste tire energy recovery facility or other entity that has been approved as a legitimate end user by the executive director.

(j) Beginning January 1, 1996, the commission may reimburse a waste tire facility for scrap tires shredded only if in accordance with one of the following options:

(1) The waste tire facility has a binding agreement to deliver, within 180 days of reimbursement, 100% of the shredded scrap tires (including process wire, wire bead and fluff) to a registered waste tire recycling facility, waste tire energy recovery facility, or other entity that has been approved as a legitimate end user by the executive director. The waste tire facility shall submit an affidavit to the executive director which confirms that the contract it has submitted to the executive director with the registered waste tire recycling facility, waste tire energy recovery facility, or entity that has been approved as a legitimate end user by the executive director, is a binding agreement as required by and described in Texas Health and Safety Code §361.477(g) and applicable Texas law. This affidavit shall also affirm that the contract consists of terms that are certain as to quantity, duration, and parties. Further, the affidavit shall affirm that the parties agree to the terms of the agreement and that it is a valid and enforceable agreement. The affidavit should be notarized and signed by someone who has authority to sign contracts for the waste tire facility. The commission shall suspend reimbursements to a waste tire facility that fails to deliver the tire shreds (including process wire, wire bead and fluff) to a legitimate end user before the 181st day after the date of reimbursement unless the executive director determines that the failure to

deliver was caused by an act of God or by unforeseen business events. The commission may not resume suspended reimbursements until the processor makes all delinquent deliveries.

(2) The waste tire facility provides to the executive director proof of delivery of the shreds to an authorized end user.

(k) For all shreds reimbursed after January 1, 1996, the waste tire facility shall report monthly to the executive director the date of reimbursement for each shredded tire and whether, as of the date of the monthly report, the shredded tire was delivered to a registered waste tire recycling facility, waste tire energy recovery facility, or other entity that has been approved as a legitimate end user by the executive director. The end use delivery information shall be submitted on a form provided by the executive director and shall be applied to the end use credit system pursuant to §330.884 of the title (relating to WTRF End Use Credit System).

(l) Registration fees.

(1) Individuals or companies that prepare a new, renewed or amended application on forms obtained from the executive director for registration as a waste tire facility shall pay a non-refundable registration fee of \$500.

(2) Registration fees collected under paragraph (1) of this subsection shall be allocated to the commission for its reasonable and necessary costs associated with reviewing for approval, applications for the registration of waste tire facilities.

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Effective July 1, 1996

#### **§330.844. Evidence of Financial Responsibility.**

The applicant seeking registration for a waste tire facility shall submit evidence of financial responsibility in conformance with the requirements contained in §§330.885-330.888 of this title (relating to Cost Estimate for Closure; Financial Assurance for Closure; Incapacity of Owners or Operators or Financial Institutions; and Wording of the Instruments).

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Effective July 1, 1996

#### **§330.845. Waste Tire Facility Record Keeping.**

(a) General requirements.

(1) The executive director approved waste tire facility layout plan, facility operating plan, and all supporting data to the application, is an operational requirement. Any significant deviation as determined by the executive director, from any of the requirements of this subsection without prior approval from the executive director shall be a violation of this subchapter.

(2) A copy of the registration with all supporting data, including the approved waste tire facility layout plan, the approved waste tire facility operating plan, and the commission's current rules shall be on-site

at all times. The facility supervisor shall be knowledgeable of current commission rules and the contents of the approved application in relation to the operational requirements of the specific waste tire facility.

(3) All drawings or other sheets prepared for revisions to a waste tire facility layout plan or other previously approved documents, which may be required by this subchapter, shall be submitted in triplicate.

(4) All records relating to contracts or binding agreements with entities that are legitimate end users must be submitted with a new or renewal application.

(b) Maintenance of records. The waste tire facility shall maintain originals of all records required by this section for a period of three years. These records shall be maintained at the same location as the shredder at all times and shall be made available to the executive director for review upon request.

(1) Any change made to the face of an original record shall be made by drawing a single line through the item being changed, ensuring that such item remains legible and readable. To the side of such mark, the person making the change shall place his/her initials with the date of such change.

(2) Any change made to the face of an original record and made in accordance with the paragraph (1) of this subsection shall be accompanied by a written justification stating the reason and purpose for the change. This written justification shall be attached to the original record and maintained in the same manner set forth in subsection (a) of this section for a period of three years. The justification shall include the date of the change, the full name and position of the individual making the change, and the justification shall be prepared simultaneously with the change to the original records.

(3) Should the executive director identify discrepancies/errors in records, and opportunity will be given to the mobile tire processor or waste tire facility to justify, in writing, any such errors or discrepancies. However, the executive director shall determine whether any written justification is adequate for the purposes of reimbursement.

(c) Required records. A waste tire facility shall maintain the following records:

(1) The manifest shall contain the following information filled out completely by the waste tire facility prior to final disposition of the scrap tires or scrap tire pieces:

(A) the name, physical address and telephone number of the individual or company that is processing the scrap tires;

(B) the waste tire facility registration number;

(C) the date and time of delivery of the scrap tires to the waste tire facility;

(D) the number and type of scrap tires delivered to the registered waste tire facility; and

(E) the signature of an authorized representative of the waste tire facility acknowledging that the information on the manifest form is true and correct.

(2) The daily log shall include at a minimum the following:

- (A) the name and commission registration number of the waste tire facility;
  - (B) the physical address of the waste tire facility storage site;
  - (C) the total number and type of whole used or scrap tires received at the waste tire facility from PEL sites, special authorization sites and generators, listed separately;
  - (D) the total number and type of whole used or scrap tires processed, and the amount, by weight, of shredded tire pieces;
  - (E) the amount by weight of shredded tire pieces removed from the waste tire facility for storage, recycling, disposal, resale, reuse or energy recovery; and
  - (F) the name and signature of an authorized facility representative acknowledging the truth and accuracy of the daily log.
- (3) a record of the specific location in the waste tire facility (i.e., tire pile number, bin number, building number, etc.) where whole used or scrap tires are located upon delivery;
- (4) a record of the description of specific events or occurrences at the waste tire facility relating to routine maintenance, fires, theft, spraying for vectors, or other similar events or occurrences;
- (5) equipment and vehicle preventive maintenance records;
- (6) the annual report required by the executive director;
- (7) a log containing copies of all monthly reimbursement vouchers submitted to the executive director for reimbursement;
- (8) a record of the dates and documentation of calibration by the manufacturer of the scale;
- (9) a daily log of unmanifested tires listing the number and type of whole used or scrap tires received, the name of the individual or company that delivered the tires, and the date that the tires were delivered to the waste tire facility.
- (10) a log containing copies of the monthly operations reports. This report shall contain the following information and shall be completely filled out each month by the waste tire facility owner or operator:
- (A) the month and date that the report was completed by the waste tire facility owner or operator;
  - (B) the name of the waste tire facility as shown on the monthly reimbursement voucher;

- (C) the mailing address and telephone number of the waste tire facility;
  - (D) the name of a contact person employed by the waste tire facility;
  - (E) the shredding operation time;
  - (F) the amount in weighed tire units or whole tires that were stored at or removed from the waste tire storage site for which reimbursement was requested;
  - (G) the amount in weighed tire units or whole tires that were stored at or removed from the waste tire storage facility for which reimbursement was not requested;
  - (H) the monthly and total financial assurance secured and recorded with the Texas Natural Resource Conservation Commission Financial Assurance Section;
  - (I) the carry-over in weighed tire units for PEL, generator, or special authorization tires shredded during that and previous months;
  - (J) a list of all generators whose manifests were accepted during that month;
  - (K) a list of all transporters that delivered whole used or scrap tires to the waste tire facility during that month;
  - (L) a diagram of the storage site outlining the specific tire piles and the weight of shredded tire pieces deposited in each pile during that month;
  - (M) a list of the legitimate end users to which tire shreds were delivered, the amount delivered to each end user and the amount added or deducted from the end user credit system maintained by the waste tire facility;
  - (N) copies of the weigh tickets and payment invoices from the landfill where the process wire, wire bead or fluff is being disposed of; and
  - (O) the signature of an authorized representative of the waste tire facility acknowledging that the information on the monthly operations report is true and correct.
- (11) a daily log identifying the location and time of all stops made by the transporter of tire shreds to and from a waste tire shredding facility and to and from a registered waste tire storage facility, waste tire recycling, or waste tire energy recovery facility.

(d) Annual report. A waste tire facility operator shall submit to the executive director an annual summary of their activities through December 31 of each year showing the number and type of scrap tires collected and shredded or resold as good used tires and the amount by weight of shredded tire pieces removed from the facility and delivered to a registered waste tire storage facility, waste tire recycling facility, or waste tire energy recovery facility. If the shredded tire pieces were delivered to an end user, the annual report will include

the name of the end user, type of end user and the date of delivery to the end user. The annual report shall be submitted no later than March 1 of the year following the end of the reporting period. The report shall be prepared on a form provided by the executive director. In addition, the waste tire facility shall comply with the requirements contained in §330.879 of this title (relating to Community Service).

(e) Local ordinances. Where local ordinances require controls and records substantially equivalent to or more stringent than the requirements of this subchapter, waste tire facility operators shall use such controls and records to satisfy commission requirements under this section upon review and approval by the executive director.

Adopted May 29, 1996

Effective July 1, 1996

**§330.846. Delivery Requirement.**

The waste tire facility shall be required to deliver or have delivered, the shredded tire pieces only to a commission registered waste tire storage facility, waste tire recycling facility, waste tire energy recovery facility or other in-state or out-of-state facility approved by the executive director.

Adopted May 29, 1996

Effective July 1, 1996

**§330.847. Operational Requirements for Waste Tire Facilities.**

(a) The owner or operator of the waste tire facility shall operate the vehicles and equipment to prevent nuisances or disturbances to adjacent landowners.

(b) Stockpiles of whole used or scrap tires at the processing location that are awaiting splitting, quartering, or shredding shall be monitored for vector control and appropriate vector control measures shall be applied at least once every two weeks.

(c) All applicants seeking registration as a waste tire facility shall also obtain registration for a waste tire storage facility prior to initiation of operation of the waste tire facility.

(d) The waste tire facility owner or operator shall conduct a training program on a quarterly basis, for all waste tire facility employees that transport or handle whole used or scrap tires or shredded tire pieces. This training program shall address the review and proper completion of manifest forms prior to the transportation of whole used or scrap tires from a generator, or the acceptance of whole used or scrap tires or shredded tire pieces at the waste tire facility. Transporters not employed by the waste tire facility but that deliver whole used or scrap tires or shredded tire pieces to the waste tire facility shall be required to attend a training and orientation program to familiarize the transporter with facility operational guidelines and requirements, the acceptable procedures for the collection and transportation of whole used or scrap tires from a generator (specifically when a collection fee can or cannot be charged), the proper completion of a manifest form, and the rules and regulations under which all aspects of the generation, transportation, processing, storage, and disposal of whole used or scrap tires or shredded tire pieces are governed. A waste tire facility owner or operator shall submit written documentation to the executive director indicating that the training and orientation programs required in this

section, have been completed. This written documentation shall be submitted by the waste tire facility owner or operator to the executive director within 10 days of completion of the training and orientation program.

(e) All applicants seeking registrations to operate as a waste tire facility and with the intent to seek reimbursement from the WTRF shall have adequate storage capacity at their registered waste tire storage facility to store all tires shredded during a specific month of operation.

**§330.848. Eligibility for the Waste Tire Recycling Fund (WTRF) Program.**

(a) A waste tire facility is eligible for reimbursement from the WTRF provided the waste tire facility is in compliance with applicable sections contained in this subchapter.

(b) The waste tire facility must possess a valid registration from the executive director.

(c) All tires shredded for WTRF reimbursement shall have been generated from within the boundaries of Texas.

(d) The waste tire facility must possess a valid registration for a waste tire storage facility from the executive director.

(e) The waste tire facility owner or operator shall maintain a complete record of all manifest forms for scrap tires for which reimbursement is being sought. The waste tire facility owner or operator shall ensure that Sections 1, 2, and 3 of the manifest form are accurately and completely filled out. Should the manifest form not be completely filled out or is filled out incorrectly, the waste tire facility owner or operator should not accept those scrap tires. The TNRCC will not provide reimbursement from the WTRF to a waste tire facility that processes scrap tires from such inaccurate or incomplete manifests.

(f) The WTRF program targets the clean-up of Priority Enforcement List (PEL) sites and the shredding of whole used or scrap tires generated on a daily basis from wholesale or retail dealers of new tires.

(g) The waste tire facility owner or operator shall maintain a complete record of all manifest forms for whole used or scrap tires for which reimbursement is being sought. The waste tire facility owner or operator shall ensure that Sections 1, 2, and 3 of the manifest form are accurately and completely filled out. Should the manifest form not be completely filled out or is filled out incorrectly, the waste tire facility owner or operator should not accept those whole used or scrap tires. The TNRCC will not provide reimbursement from the WTRF to a waste tire facility that processes whole used or scrap tires from such inaccurate or incomplete manifests.

Adopted May 29, 1996

Effective July 1, 1996



**§330.849. Penalties for Waste Tire Facilities.**

An owner or operator of a waste tire facility that violates the requirements of this subchapter shall be subject to any commission action authorized by law to secure compliance, including the assessment of administrative penalties or civil penalties as prescribed by law. In addition, the commission may suspend a registration of or a reimbursement to a waste tire facility upon initiation of enforcement proceeding and while the procedure is pending for the violation of this subchapter or order issued under this subchapter.

Adopted May 29, 1996

Effective July 1, 1996

**§330.850. Applicability and Responsibility for End Use of Scrap Tires.**

(a) The requirements contained in this section establish standards applicable to waste tire recycling or energy recovery facilities that:

(1) utilize shredded tire pieces from waste tire facilities as raw material for the purpose of manufacturing products;

(2) utilize scrap tires or scrap tire pieces and convert all or a portion thereof by any means including, but not limited to mechanical, chemical, or thermal processes in order to manufacture products;

(3) utilize scrap tires or scrap tire pieces as tire derived fuel for energy recovery purposes;

(4) collect scrap tires, or provide a collection site where scrap tires may be deposited by the general public or by designated and registered waste tire facilities, waste tire recycling facilities or waste tire energy recovery facilities; or

(5) store scrap tires, scrap tire pieces or shredded tire pieces for periods longer than 30 consecutive calendar days at transportation facilities such as marine terminals, rail yards or trucking facilities.

(b) For the purpose of this section, scrap tires, scrap tire pieces or shredded tire pieces will be referred to as "TIRES".

(c) Waste tire recycling and energy recovery facilities that provide an end use for tires shall ensure that their facility is registered and operated in accordance with the applicable sections of this subchapter.

(d) Waste tire recycling facilities seeking construction grants under this subchapter shall process or recycle and store the tires in state.

(e) Waste tire energy recovery facilities seeking reimbursements or grants under this subchapter shall burn and store the tires in state.

(f) Waste tire recycling and energy recovery facilities shall submit a non-refundable \$500 application fee with the submittal of a new, amended or renewal registration application to the executive director.

Adopted May 29, 1996

Effective July 1, 1996

**§330.851. Applicability and Responsibility for Waste Tire Recycling Facilities.**

(a) For the purpose of this section and §330.852 of this title (relating to Requirements for Registration for a Waste Tire Recycling Facility), whole scrap tires, scrap tire pieces or shredded tire pieces will be referred to as "TIRES".

(b) All waste tire recycling facilities shall be subject to the applicable sections of this subchapter.

(c) Entities that make powdered rubber, burn tire derived fuel, generate or utilize buffing dust, or retread or recap tires are not eligible for construction grants as identified in subsection (e) of this section.

(d) An application for registration as a waste tire recycling facility shall be made to the executive director on a form provided by the executive director.

(e) For each year of the fiscal biennium, the executive director may not expend more than \$2 million to provide assistance grants for constructing waste tire recycling facilities. These construction grants may only be awarded in lump sums.

(f) The expenditure limit identified in subsection (e) of this section may be modified by action of the commission pursuant to §330.877 of this title (relating to Transfer of Appropriated Funds Within the WTRF).

(g) Waste tire recycling facilities shall comply with requirements contained in §330.852(c) and (e) of this title (relating to Requirements for Registration for a Waste Tire Recycling Facility) where applicable.

(h) Waste tire recycling facilities shall provide manifests to registered generators in order that they may initiate the manifest for each individual load of whole used or scrap tires hauled off-site from their business location.

(i) Waste tire recycling facilities shall store the resulting product of the process in which the facility is involved in an enclosed and covered building.

Adopted May 29, 1996

Effective July 1, 1996

**§330.852. Requirements for Registration for a Waste Tire Recycling Facility.**

(a) Registration requirements.

(1) All waste tire recycling facilities shall register with the executive director prior to operation. Registration forms shall be provided by the executive director upon request.

(2) A copy of the recycling registration shall be maintained at the designated place of business.

(3) A waste tire recycling registration shall expire 60 months from the date of issuance unless the waste tire recycling facility changes ownership prior to that time. A waste tire recycling registration is transferable contingent upon prior executive director approval. A change in the federal tax identification number will constitute a change of ownership.

(4) Waste tire recycling facilities shall submit to the executive director written notification to amend their application within 15 days of a change in registration if:

- (A) any data submitted in support of the application for registration has changed;
- (B) the office or place of business is relocated; or
- (C) the registered name of the facility owner or operator has changed.

(5) A new waste tire recycling facility registration application shall be submitted to the executive director within 15 days of a determination by the executive director that operations or management methods are no longer adequately described by the existing registration.

(6) Preparation and submission of an application to the executive director for a waste tire recycling facility shall be in accordance with the following procedures:

(A) The application for registration shall be prepared and signed by the applicant. The application shall identify the use of the tires (e.g. the product to be made and the end use market), and shall include information necessary for the executive director to make an evaluation of the proposed operation.

(B) The application for registration of a waste tire recycling facility shall be submitted as one original and one copy to the executive director with all supporting data also submitted in duplicate unless otherwise directed by the executive director.

(C) Data presented in support of an initial or renewal application for a waste tire recycling facility shall consist of:

(i) the legal name, mailing address, telephone number and facsimile number of the responsible entity making the application and accepting responsibility and liability for operations;

(ii) the name, mailing address, telephone number and facsimile number of the property owner of the waste tire recycling facility;

(iii) the physical location, including county and street address, if applicable, of the waste tire recycling facility;

(iv) the maximum amount of tires (in pounds) that will be on the waste tire recycling facility at any given time;

(v) the amount of tires necessary to provide a 30 calendar day raw material supply for the proposed recycling process;

(vi) the storage method (piles on the ground, piles inside a building or enclosure, or totally enclosed and lockable containers that are locked during non-operational hours);

(vii) the product to be manufactured and the end use market; and

(viii) a property owner affidavit on a form supplied by the executive director when the applicant is not the owner of record of the land described in the application on which the facility is located, or is not a city, county, state, federal agency, or other governmental entity.

(D) The waste tire recycling facility registration shall be issued upon receipt and approval of an administratively and technically complete application, including the posting of the financial assurance, if required.

(7) If the applicant seeking registration for a waste tire recycling facility intends to have more than a 30 calendar day supply of tires at the facility site, then the applicant shall provide the following additional information:

(A) a waste tire recycling facility site layout plan drawn to an acceptable scale showing location of the storage areas; fire lanes; access roads (internal and external); fire control facilities; facility security and fencing;

(B) the local governmental entities having jurisdiction over the waste tire recycling facility; and

(C) evidence of financial responsibility in conformance with the requirements contained §§330.885-330.888 of this title (relating to Cost Estimate for Closure; Financial Assurance for Closure; Incapacity of Owners or Operators or Financial Institutions; and Wording of the Instruments).

(b) Design requirements for a waste tire recycling facility. The following design requirements are required for registration as a waste tire recycling facility that intends to store more than a 30 calendar day supply of tires on site.

(1) The waste tire recycling facility registration application and financial assurance instruments shall define the maximum number of tires on site.

(A) Outside tire piles shall be no greater than 15 feet in height nor shall the pile cover an area greater than 8,000 square feet.

(B) Inside storage piles or bins shall not exceed 12,000 cubic feet with a 10-foot aisle space between piles or bins.

(2) Outside tire piles and entire buildings used to store scrap tires shall not be located within 20 feet of the property line or easements of the waste tire recycling facility. The executive director may grant a variance from the 20-foot property line or easement requirement. In order for the applicant to be granted a variance, the applicant must demonstrate to the satisfaction of the executive director that the distance that is the subject of the variance is adequate for fire fighting purposes and meets the other applicable requirements of this subchapter.

(3) Appropriate vector controls shall be used as necessary and in accordance with other applicable ordinances and regulations.

(4) There shall be a minimum separation of 20 feet between outside tire piles. This 20-foot space shall be designated as a fire lane and shall be an all-weather road as determined by the local fire authority and completely encircle each pile. The open space between buildings and outside tire piles shall be a minimum of 20 feet and kept open at all times and maintained free of rubbish, equipment, tires, or other materials.

(5) The waste tire recycling facility shall be completely enclosed with at least a six-foot high chain-link type security fence with no less than three strands of taut barbed wire encircling the top of the fence and with lockable gates of the same design as the fence.

(6) The waste tire recycling facility shall have an adequate fire protection system as defined by the local fire marshal and shall be in conformance with all local and state fire code requirements. The fire marshal within whose jurisdiction the waste tire recycling facility is located shall review the fire protection system. The application shall contain a letter from the fire marshal approving the fire protection system and the site layout plan shall contain the signature and date the fire marshal reviewed the plan.

(c) Waste tire recycling facility recordkeeping. Pursuant to §330.879 of this title (relating to Community Service), the waste tire recycling facility operator shall submit to the executive director an annual summary of their activities through December 31 of each year showing the number and type of tires delivered to the facility and subsequently recycled and a summary of the community service that was performed during the preceding year. In addition, the waste tire recycling facility shall retain all manifests received from a transporter of tires delivered to the waste tire recycling facility. If the tires were received directly from a generator, the waste tire recycling facility shall return the top original of the five-part manifest to the generator.

(d) Local ordinances. Where local ordinances require procedures, controls and records substantially equivalent to or more stringent than the requirements of this subchapter, the waste tire recycling facility may use such controls and records in satisfaction of applicable commission requirements.

(e) Waste tire recycling facility manufacturing recordkeeping. The registered waste tire recycling facility shall report monthly, on a form prescribed by the executive director, the amount, in pounds, and percentage of the total scrap tires used in the manufacturing process and the percent of the total number of manufactured products that were sold to a distributor. The waste tire recycling facility shall use at least 30% of all scrap tires delivered monthly to the facility in the manufacturing process the subsequent month. The waste tire recycling facility shall document the sale to a distributor of at least 30% of the product manufactured semi-annually.

(f) Suspension, revocation or denial of initial or renewal registration procedures.

(1) The commission may suspend or revoke a registration, or deny the issuance of an initial or renewal registration for:

(A) failure to maintain complete and accurate records under §330.852 of this title (relating to Requirements for Registration for a Waste Tire Recycling Facility);

(B) failure to maintain equipment in safe working order;

(C) altering any record maintained or received by the registrant;

(D) delivery of intermediate manufactured material to a facility not authorized, registered or permitted by the commission to handle the material;

(E) failure to comply with any rule or order issued by the commission under the requirements of this chapter;

(F) failure to maintain financial assurance as required in §§330.885-330.888 of this title (relating to Cost Estimate for Closure; Financial Assurance for Closure; Incapacity of Owners or Operators or Financial Institutions; and Wording of the Instruments);

(G) failure to complete the work required to clean up a PEL site as stated in the executive director approved Site Clean-Up Plan; or

(H) having knowingly accepted out-of-state scrap tires on a manifest using a commission approved transporter or generator number.

(2) A waste tire recycling facility registration shall be suspended for a period of one year; however, depending upon the seriousness of the offense(s), the time of suspension may be increased or decreased. A waste tire recycling facility registration is revoked automatically upon a second suspension. If the registration is suspended or revoked, a waste tire recycling facility shall not utilize any whole used or scrap tires or shredded tire pieces regulated under this subchapter.

(3) The holder of a waste tire recycling facility registration that has been revoked by the commission may reapply for registration under this subchapter as if applying for the first time, after a period of at least one year from the date of revocation. If a waste tire recycling facility registration is revoked by the commission a second time, the revocation shall be permanent.

(4) Appeal of suspension, revocation or denial of initial or renewal registration procedures are as follows:

(A) An opportunity for a formal hearing on the suspension or revocation of registration may be requested in writing by the applicant by certified mail, return receipt requested, provided the request is postmarked within 20 days after a notice of proposed suspension or revocation or denial of the initial or renewal registration has been sent from the executive director to the last known address of the applicant.

(B) An opportunity for a formal hearing on the denial of initial registration or renewal of registration may be requested in writing by the applicant by certified mail, return receipt requested, provided the request is postmarked within 20 days after a notice of denial of initial or renewal registration has been sent from the executive director to the last known address listed on the application. If the registration is denied, a person shall not utilize whole used or scrap tires or shredded tire pieces regulated under this subchapter.

(C) The formal hearing under this paragraph shall be in accordance with the requirements of the Administrative Procedure Act, Texas Government Code Annotated, §2001 et seq. (Vernon 1993), the Texas Solid Waste Disposal Act, Texas Health and Safety Code Annotated, Chapter 361 (Vernon 1993), and the rules of the commission.

Adopted May 29, 1996

Effective July 1, 1996

**§330.853. Applicability and Responsibility for Waste Tire Energy Recovery Facilities.**

(a) Unless otherwise designated, for the purpose of this section and §§330.854-330.855 of this title (relating to Funding for Waste Tire Energy Recovery Facilities and Requirements for Registration for a Waste Tire Energy Recovery Facility), whole scrap tires, shredded tire pieces or scrap tire pieces will be referred to as "TIRES".

(b) Waste tire energy recovery facilities shall be subject to the applicable sections of this subchapter.

(c) Waste tire energy recovery facilities shall obtain all other applicable authorizations (i.e., permits and/or registrations) necessary for conducting tire related activities prior to submittal of an application for registration as a waste tire energy recovery facility under the WTRF program.

(d) Entities that intend to operate as waste tire energy recovery facilities are not required to obtain additional registrations under WTRF program rules in order to operate, unless the entity intends to personally transport tires from registered generators, waste tire facilities, or storage facilities. In such event, the waste tire energy recovery facility shall obtain a waste tire transporter registration pursuant to §330.812 of this title (relating to Transporter Registration).

(e) Waste tire energy recovery facilities that collect whole tires from generator places of business shall provide manifests to registered generators in order that they may initiate the manifest for each individual load of whole used or scrap tires hauled off-site from their business location.

Adopted May 29, 1996

Effective July 1, 1996

**§330.854. Funding for Waste Tire Energy Recovery Facilities.**

(a) The executive director may not reimburse a waste tire energy recovery facility if the facility does not burn tires, is not registered or permitted to burn tires or is not physically capable of burning tires for energy recovery.

(b) The executive director each month shall pay a waste energy recovery facility that burns shredded tires and meets the requirements of this subchapter \$ .40 for each weighed tire unit burned during the preceding calendar month.

(c) For each fiscal year, the executive director may not expend more than \$600,000 to waste tire energy recovery facilities that meet the requirements contained in subsection (b) of this section and burn shredded tires as fuel.

(d) The executive director each month shall pay a waste energy recovery facility that burns whole tires and meets the requirements of this subchapter \$ .80 for each weighed tire unit burned during the preceding calendar month.

(e) Beginning September 1, 1995 through August 31, 1996, the executive director may not expend more than \$6 million in grants to waste tire energy recovery facilities.

(1) Not more than \$4 million may be expended to provide grants to waste tire energy recovery facilities that are not, as of September 1, 1995, using tire derived fuel, to cover the necessary retrofitting costs to enable the facilities to use whole tires as fuel. These retrofitting grants may be awarded on a \$ .80 per weighed tire unit basis or as a lump sum amount.

(2) Not more than \$2 million may be expended to provide grants to waste tire energy recovery facilities that are not, as of September 1, 1995, using tire derived fuel, to cover the necessary retrofitting costs to enable the facilities to use shredded tires as fuel. These retrofitting grants shall be awarded as a lump sum amount. Entities receiving a grant under this provision shall not be eligible for reimbursement of whole tires under the WTRF.

(f) Beginning September 1, 1996 through December 31, 1997, the executive director may not expend more than \$6 million for reimbursement payments to waste tire energy recovery facilities that burn whole tires as fuel.

(g) The expenditure limits identified in subsections (c), (e), and (f) of this section may be modified by the commission pursuant to §330.877 of this title (relating to Transfer of Appropriated Funds Within the WTRF).

Adopted May 29, 1996

Effective July 1, 1996

**§330.855. Requirements for Registration for a Waste Tire Energy Recovery Facility.**

(a) Registration requirements for a waste tire energy recovery facility.

(1) Waste tire energy recovery facilities shall register each site on forms provided by the executive director.

(2) Entities that apply and receive a waste tire energy recovery registration from the executive director shall maintain a copy of the registration at the designated place of business.



(3) A waste tire energy recovery registration shall expire 60 months from the date of issuance unless the facility changes ownership prior to that time. A waste tire energy recovery facility registration is transferrable contingent upon prior approval from the executive director.

(4) Preparation and submission of an application to the executive director for a waste tire energy recovery facility shall be in accordance with the following procedures.

(A) The application for registration of a waste tire energy recovery facility shall be submitted as one original and one copy to the executive director with all supporting data also submitted in duplicate unless otherwise directed by the executive director.

(B) Data presented in support of an initial or renewal application for a waste tire energy recovery facility shall consist of:

(i) the legal name, mailing address, telephone number of the responsible entity making the application and accepting responsibility and liability for operations;

(ii) the name, mailing address, telephone number of the property owner of the waste tire energy recovery facility;

(iii) the physical location, including county and street address, if applicable, of the waste tire energy recovery facility;

(iv) the maximum number of weighed tire units that will be on site at any given time;

(v) a list of all other applicable federal, state, and local permits and/or registrations and the associated numbers required by §330.853(c) of this title (relating to Applicability and Responsibility for Waste Tire Energy Recovery Facilities); and

(vi) a property owner affidavit in a form supplied by the executive director when the applicant is not the owner of record of the land described in the application on which the facility is located, or is not a city, county, state, federal agency, or other governmental entity.

(5) A statement whether the waste tire energy recovery facility will store in excess of a 30 day supply of tires on the site. If the waste tire energy recovery facility intends to store in excess of a 30 day supply on site, the application for registration shall include evidence of financial responsibility pursuant to §§330.885-330.888 of this title (relating to Cost Estimate for Closure; Financial Assurance for Closure; Incapacity of Owners or Operators or Financial Institutions; and Wording of the Instruments).

(b) Design requirement. If the waste tire energy recovery facility does not intend to provide its own fire fighting personnel or system, the facility shall make arrangements with public or private emergency response personnel that are capable of complying with applicable fire and building codes. In addition, the waste tire energy recovery facility shall provide documentation that the fire protection system was reviewed and approved by the fire marshal within whose jurisdiction the waste tire energy recovery facility is located.

(c) Waste tire energy recovery facility record keeping.

(1) Facilities that store tires under this subchapter shall maintain the following records in the form of a monthly report approved by the executive director:

(A) the number of in-state and out-of-state weighed tires received at the waste tire energy recovery facility;

(B) the number of in-state and out-of-state weighed tires burned by the waste tire energy recovery facility; and

(C) the name, signature and date of the facility representative acknowledging the truth and accuracy of the monthly report.

(2) The monthly report shall be submitted to the executive director by the 20th day of the month following the month for which the data was collected.

(3) The waste tire energy recovery facility shall retain all manifests received from a transporter of tires delivered to the waste tire energy recovery facility. The waste tire energy recovery facility shall complete the manifest and return the top original of the manifest to the generator or the waste tire facility.

(4) Pursuant to §330.879 of this title (relating to Community Service), the waste tire energy recovery facility operator shall submit to the executive director an annual summary of their activities through December 31 of each year showing the number and type of tires delivered to the facility and subsequently burned, the date the waste tire energy recovery facility received reimbursement for such tires and a summary of the community service that was performed during the preceding year.

(5) The waste tire energy recovery facility operator shall retain all manifests and all monthly reports regarding the collection, transportation and disposition of the tires. Such records shall be retained for three years and made available for review to the executive director upon request.

(A) Any change made to the face of an original record shall be made by drawing a single line through the item being changed, ensuring that such item remains legible and readable. To the side of such mark, the person making the change shall place his/her initials with the date of such change.

(B) Any change made to the face of an original record and made in accordance with subparagraph (A) of this paragraph shall be accompanied by a written justification stating the reason and purpose for the change. This written justification shall be attached to the original record and maintained in the same manner set forth previously in subsection (a) of this section for a period of three years. The justification shall include the date of the change, the full name and position of the individual making the change, and the justification shall be prepared simultaneously with the change to the original records.

(C) Should the executive director identify discrepancies/errors in records, an opportunity will be given to the waste tire energy recovery facility to justify, in writing, any such errors or

discrepancies. The executive director will determine whether any written justification is adequate for the purpose of reimbursement.

(6) Waste tire energy recovery facilities shall have access to a scale that is either certified annually by the weights and measures section of the Texas Department of Agriculture (TDA) or certified on an annual basis by the manufacturer that developed and installed the scale, or an independent third party approved by the executive director. All tires for which WTRF reimbursement is being sought shall be weighed.

(7) If the waste tire energy recovery facility is using a public weigh scale, the executive director shall be notified in writing of the name and location of the public weigh scale used for weighing tires.

(8) For the purpose of this subchapter, the waste tire energy recovery facility shall determine the tare weight for each truck and trailer combination used to weigh tires for WTRF reimbursement on a daily basis. The tare weight for the truck and trailer combination shall be determined by the weigh scale and shall be mechanically printed on the weigh ticket. The date and time of all weighing activity must also be mechanically printed on the weigh ticket. If a public weigh station is used, it must be manned by a public weigher or deputy public weigher during hours of operation.

(9) Waste tire energy recovery facilities utilizing whole tires shall comply with the PEL assignment or contract process and weigh those tires separately. The weight documentation shall identify them as priority enforcement list tires.

(10) The waste tire energy recovery facility shall maintain a daily log of unmanifested tires listing the number and type of whole used or scrap tires received, the name of the individual or company that delivered the tires, and the date that the tires were delivered to the waste tire energy recovery facility.

(11) The waste tire energy recovery facility shall maintain a record of the description of specific events or occurrences at the waste tire energy recovery facility relating to routine maintenance, fires, theft, spraying for vectors, or other similar events or occurrences.

(d) Local ordinances. Where local ordinances require procedures, controls and records substantially equivalent to or more stringent than the requirements of this subchapter, the waste tire energy recovery facility owner or operator may use such procedures, controls and records to the satisfaction of commission requirements, upon prior review and approval by the executive director.

(e) Annual report. A waste tire energy recovery facility owner or operator shall submit to the executive director an annual summary of their activities through December 31 of each year showing the number or weight, type of whole or shredded tires, both in-state and out-of-state, utilized at the facility. The annual report shall be submitted no later than March 1 of the year following the end of the reporting period. The report shall be prepared on a form provided by the executive director.

(f) Suspension, revocation or denial of initial or renewal registration procedures.

(1) The commission may suspend or revoke a registration, or deny the issuance of an initial or renewal registration for:

(A) failure to maintain complete and accurate records under §330.855 of this title (relating to Requirements for Registration for a Waste Tire Energy Recovery Facility);

(B) altering any record maintained or received by the registrant;

(C) failure to comply with any rule or order issued by the commission under the requirements of this chapter;

(D) failure to submit annual reports as required by §330.855(e) of this title (relating to Requirements for Registration for a Waste Tire Energy Recovery Facility);

(E) failure to maintain financial assurance as required in §§330.885-330.888 of this title (relating to Cost Estimate for Closure; Financial Assurance for Closure; Incapacity of Owners or Operators or Financial Institutions; and Wording of the Instruments);

(F) altering any request for reimbursement from the WTRF;

(G) failure to complete the work required to clean up a PEL site as stated in the executive director approved Site Clean-Up Plan; or

(H) having knowingly accepted out-of-state scrap tires on a manifest using a commission approved transporter or generator number.

(2) A waste tire energy recovery facility registration shall be suspended for a period of one year; however, depending upon the seriousness of the offense(s), the time of suspension may be increased or decreased. A waste tire energy recovery facility registration is revoked automatically upon a second suspension. If the registration is suspended or revoked, a waste tire energy recovery facility shall not utilize any whole used or scrap tires or shredded tire pieces regulated under this subchapter.

(3) The holder of a waste tire energy recovery facility registration that has been revoked by the commission may reapply for registration under this subchapter as if applying for the first time, after a period of at least one year from the date of revocation. If a waste tire energy recovery facility registration is revoked by the commission a second time, the revocation shall be permanent.

(4) Appeal of suspension, revocation or denial of initial or renewal registration procedures are as follows:

(A) An opportunity for a formal hearing on the suspension or revocation of registration may be requested in writing by the applicant by certified mail, return receipt requested, provided the request is postmarked within 20 days after a notice of proposed suspension or revocation or denial of the initial or renewal registration has been sent from the executive director to the last known address of the applicant.

(B) An opportunity for a formal hearing on the denial of initial registration or renewal of registration may be requested in writing by the applicant by certified mail, return receipt requested, provided the request is postmarked within 20 days after a notice of denial of initial or renewal registration has been sent

from the executive director to the last known address listed on the application. If the registration is denied, a person shall not utilize whole used or scrap tires or shredded tire pieces regulated under this subchapter.

(C) The formal hearing under this paragraph shall be in accordance with the requirements of the Administrative Procedure Act, Texas Government Code Annotated, §2001 et seq. (Vernon 1993), the Texas Solid Waste Disposal Act, Texas Health and Safety Code Annotated, Chapter 361 (Vernon 1993), and the rules of the commission.

Adopted May 29, 1996

Effective July 1, 1996

**§330.856. Applicability and Responsibility for Waste Tire Transfer Stations or Collection Centers.**

(a) For the purpose of this section and §330.857 of this title (relating to Requirements for a Waste Tire Transfer Station or Collection Center) waste tire facilities, waste tire recycling facilities and waste tire energy recovery facilities will be referred to as "WASTE TIRE UTILIZERS", and whole scrap tires, shredded tire pieces or scrap tire pieces will be referred to as "TIRES".

(b) Waste tire transfer stations shall be operated only by waste tire utilizers and may only accumulate generator tires. A waste tire utilizer may designate a registered generator location as a waste tire transfer station provided the generator agrees to comply with all registration requirements. In the event that a generator location is designated, the registration will still be issued to the waste tire utilizer.

(c) Recycling collection centers shall be operated only by governmental entities and may only accept tires from the general public.

(d) Governmental entities that accumulate or accept tires from the general public and waste tire utilizers or generators that accept tires from generators for the purpose of utilization, regardless of whether they receive reimbursement from the WTRF, are required to obtain a waste tire transfer station or collection center registration from the executive director on an approved form prior to receipt of such tires.

(e) Collection centers shall obtain manifests for each individual load of tires hauled off-site from waste tire utilizers.

Adopted May 29, 1996

Effective July 1, 1996

**§330.857. Requirements for Registration for a Waste Tire Transfer Station or Collection Center.**

(a) Registration requirements.

(1) Waste tire utilizers or generators, or governmental entities that apply and receive a waste tire transfer station or collection center registration from the executive director shall maintain a copy of the registration at the waste tire transfer station or collection center.

(2) A waste tire transfer station or collection center registration shall expire 24 months from the date of issuance unless facility ownership changes, in which case the registration expires upon the sale of the facility.

(3) Preparation and submission of an application to the executive director for a waste tire transfer station or collection center shall be in accordance with the following procedures:

(A) The application for registration shall be prepared and signed by the applicant on a form to be provided by the executive director.

(B) The application for a registration of a waste tire transfer station or collection center shall be submitted as one original and one copy to the executive director with all supporting data also submitted in duplicate unless otherwise directed by the executive director.

(C) Data presented in support of an initial or renewal application for a waste tire transfer station or collection center shall consist of:

(i) the legal name, mailing address, telephone number of the responsible entity making the application and accepting responsibility and liability for operations;

(ii) the physical location, including county and street address of the waste tire transfer station or collection center;

(iii) the maximum number of tires that will be allowed to accumulate on site at any given time; and

(iv) an applicant's statement and signature provided by the applicant, or the authorized representative empowered to act on behalf of the applicant.

(b) Design requirements for a waste tire transfer station or collection center.

(1) A waste tire transfer station or collection center shall be limited to a maximum of ten totally enclosed and lockable containers or buildings.

(2) Appropriate vector controls shall be used as necessary and in accordance with applicable ordinances and regulations.

(3) The waste tire transfer station or collection center shall have an adequate fire protection system and shall be in conformance with all local and state fire, building and zoning code requirements.

(4) No tire shall be allowed to remain at a waste tire transfer station or collection center longer than 90 days.

(5) The Type VIII-WT restrictions on the maximum number of tires on a site do not apply to waste tire transfer stations or collection centers.

(c) Waste tire transfer station or collection center record keeping.

(1) The waste tire transfer station or collection center shall ensure that all manifests are properly initiated for all tires removed from the facility.

(2) Waste tire collection centers shall retain the original manifests for three years and be made available for review to the executive director upon request.

(d) Local ordinances. Where local ordinances require controls substantially equivalent to or more stringent than the requirements of this subchapter, the waste tire transfer station or recycling collection center owner or operator may use such controls in satisfaction of commission requirements upon review and approval by the executive director.

Adopted May 29, 1996

Effective July 1, 1996

**§330.858. Requirements for a Waste Tire Transportation Facility.**

Any transportation facility storing tires for periods longer than 30 calendar days at transportation facilities such as marine terminals, rail yards or trucking facilities, shall register the facility with the executive director on a form provided by the executive director and comply with all applicable requirements contained in §330.853 and §330.855 of this title (relating to Applicability and Responsibility for Waste Tire Energy Recovery Facilities and Requirements for Registration for a Waste Tire Energy Recovery Facility).

Adopted May 29, 1996

Effective July 1, 1996

**§330.859. Penalties for Owners or Operators of Waste Tire Recycling Facilities, Waste Tire Energy Recovery Facilities, Waste Tire Transfer Stations or Collection Centers, and Waste Tire Transportation Facilities.**

An owner or operator of a waste tire recycling facility, waste tire energy recovery facility, waste tire transfer station or collection center, or a waste tire transportation facility that violates the requirements this subchapter shall be subject to any action authorized by law to secure compliance, including revocation or suspension of registration and the assessment of administrative penalties or civil penalties as prescribed by law. In addition, the commission, after notice and opportunity for a hearing, may suspend registration of, or a reimbursement to one of the identified facilities upon initiation of enforcement proceeding for the violation of this subchapter or order issued under this subchapter until conclusion of the enforcement proceeding.

Adopted May 29, 1996

Effective July 1, 1996

**§330.860. Special Authorization Priority Enforcement List.**

(a) Special Authorization Priority Enforcement List

(1) General. The Special Authorization Priority Enforcement List (SAPEL) consists of waste tires generated in specially designated counties or regions which are identified by the executive director as areas

which are not receiving adequate collection service and which pose a threat to public health and safety or the environment.

(A) The executive director may designate collection entities as necessary to ensure continuous and adequate collection of SAPEL tires.

(B) The executive director may impose certain conditions on the SAPEL tire collection activities of designated collection entities as necessary to minimize disruption of activities at the generator locations and any other actions consistent with this subsection that are necessary to carry out the purposes of this section.

(C) Implementation of this section is not intended to impair or reduce existing generator collection in areas of the state containing SAPEL tires if adequate collection service is currently provided.

(D) The requirements of §330.878 of this title (relating to Special Authorization Tires) do not apply to SAPEL tires.

(2) Relationship to Priority Enforcement List (PEL). The SAPEL shall be a component of the PEL and the number of tires on sites listed on the SAPEL shall be included in determining whether the total number of tires at sites contained on the PEL exceeds 2.5 million. Unless otherwise provided by the executive director, the requirements in §§330.861- 330.870 of this title (relating to Priority Enforcement List; Potentially Responsible Party; Priority Enforcement List; Ranking of Illegal Waste Tire Sites; Assignment of PEL Sites; Pre PEL Clean-up Responsibilities; Site Clean-up Agreement; Approval to Collect and Process Tires from PEL Sites; Post PEL Clean-up Responsibilities; and Authority of Commission Personnel) do not apply to the SAPEL or SAPEL process.

(3) Generator responsibility. A generator desiring to have tires located at his site listed on the SAPEL shall cooperate fully with executive director instructions. A generator shall make his site available for access by designated collection entities for SAPEL tire collection. Failure to comply may result in tires at that site being ineligible for listing on the SAPEL.

(b) SAPEL Contract.

(1) General.

(A) The executive director may contract with designated collection entities as necessary to ensure adequate collection of SAPEL tires.

(B) SAPEL tires and tire pieces are eligible for reimbursement as long as all applicable requirements relating to reimbursement and end use set forth in this subchapter are satisfied. Any available reimbursement shall be reduced by the amount of transportation costs paid on a tire under a contract issued under this section.

(2) As part of the SAPEL contract, a designated collection entity may be required to comply with the following:



- (A) for entities currently providing scrap tire collection, proof that their participation in the SAPEL contract process shall not impair or reduce their existing generator collection routes;
- (B) attempt to the maximum extent possible to deliver SAPEL tires to an end user;
- (C) special manifesting and reporting requirements;
- (D) provide proof of ability to ensure adequate collection service for sites containing SAPEL tires; and
- (E) any other requirements as necessary which are consistent with this section, and which will facilitate cleanup of SAPEL tires and protect human health, safety and the environment.

Adopted November 20, 1996

Effective December 13, 1996

**§330.861. Priority Enforcement List (PEL) Program.**

(a) Applicability. The regulations contained in these sections establish standards applicable to the creation and maintenance of the PEL and the identification and ranking of illegal waste tire sites, and the determination of a Potentially Responsible Party (PRP). For the purpose of this section and §§330.862-330.870 of this title (relating to Potentially Responsible Party (PRP), Priority Enforcement List (PEL), Ranking of Illegal Waste Tire Sites, Contracting of PEL Sites, Pre PEL Clean-Up Responsibilities, Site Clean-Up Agreement, Approval to Collect and Utilize Tires from PEL Sites, Post PEL Clean-Up Responsibilities, and Authority of Commission Personnel), the term, "WASTE TIRE UTILIZER" shall include waste tire facilities, waste tire recycling facilities and waste tire energy recovery facilities where applicable.

(b) Responsibility. Each utilizer that participates in the WTRF shall be responsible for operating in compliance with all provisions of this subchapter when the total number of scrap tires or scrap tire pieces contained in illegal scrap tire sites that are identified on the PEL is above 2,500,000 tires for more than 60 consecutive days.

(c) PEL procurement. Upon executive director determination that the number of PEL tires has fallen below 2,500,000, the commission may issue contracts to procure cleanups for the removal of tires from such sites through a competitive bid process conducted in accordance with the provisions of the State Purchasing and General Services Act (Article 601b, Vernon's Civil Texas Statutes) applicable to contract for services. The commission may choose to contract on a regional or site-specific basis and may award a contract for services that authorize reimbursement at a rate of \$ .85 per weighed tire unit or an amount authorized by the commission based on the competitive bids received. The commission may elect not to enter into contracts under this section.

(d) PEL requirement. The minimum 15% maximum 30% priority enforcement list requirement is not applicable when the commission is conducting cleanups through the competitive bid process described in subsection (c) of this section. Notification to any waste tire utilizer of inapplicability of the minimum 15% maximum 30% priority enforcement list requirement will be provided in writing by the executive director.

(e) PEL restrictions. For the purposes of this subchapter the calculation for the maximum 2,500,000 tire PEL limit shall not include tires on sites currently assigned for clean-up, or tires on sites under commission enforcement or attorney general action.

(f) Completion of PEL sites. Upon the commission's procurement for clean-up of PEL sites, any waste tire utilizer currently assigned PEL sites shall complete those clean-ups at the minimum 15% maximum 30% requirement per month until the site cleanup is completed.

(g) WTRF encumbered for PEL procurement. For each fiscal year, the commission shall expend not more than \$3.52 million for the cleanup and closure of PEL sites under conditions described in subsection (c) of this section.

(h) Pursuant to subsection (c) of this section, if no bids are submitted under the commission's procurement process for the clean-up of PEL sites, or at the executive director's discretion, the executive director may reinstitute the PEL assignment process and begin assigning PEL sites on an individual basis to waste tire facilities.

Adopted May 29, 1996

Effective July 1, 1996

**§330.862. Potentially Responsible Party (PRP).**

(a) An illegal waste tire site that is eligible for placement on the PEL can be cleaned-up by a waste tire utilizer for reimbursement from the WTRF provided the executive director determines there is no PRP for the site.

(b) The actual determination of the PRP will be made by the executive director based on the facts obtained during the investigation and evaluation of the PEL site for classification. For purposes of the WTRF and this subchapter, the following three criteria determines whether an individual or company is a PRP:

(1) the individual or company must be the property owner of record, or the site operator of the scrap tires or tire pieces on the site or the depositor of the scrap tires or scrap tire pieces; and

(2) the individual or company must have benefitted financially from the disposition of the scrap tires or tire pieces on the site; and

(3) the individual or company must be financially capable of funding total or partial site clean-up at a cost of \$ .80 for each weighed tire unit removed from the site.

(c) If the executive director determines that a PRP exists for an illegal waste tire site then the executive director will send a Notice of Violation (NOV) letter by certified mail, return receipt requested, to the last known address of the PRP, informing that individual or company that the executive director has identified him/her as a PRP. The NOV shall inform the PRP that he/she shall, within 20 days, contact a waste tire utilizer to begin clean-up of the illegal waste tire site.

(d) If the PRP is financially unable to fund the clean-up of the illegal waste tire site, then the PRP shall notify the executive director of his/her financial inability and submit a current financial statement detailing the PRP's financial status. Based on the executive director's review of the PRP's financial statement, the executive director will determine whether or not the WTRF will fund all or a percentage of the clean-up of the illegal waste tire site.

(e) If the executive director's review of the PRP's financial statement indicates the PRP is capable of funding all or a percentage of the clean-up then the PRP will be issued a commission order requiring clean-up of the illegal waste tire site at \$ .80 per weighed tire unit.

(f) If the commission issues an order determining that the PRP is capable of funding all or a percentage of the clean-up of the illegal waste tire site and the PRP fails to comply with the requirements of the order, then the executive director shall refer the case to the Office of Attorney General for litigation.

(g) The PRP shall be obligated to comply with the provisions of this subchapter that are applicable to the illegal waste tire site for which he/she is responsible. Failure of the PRP to comply with the applicable rules in this subchapter shall constitute a violation and shall subject the PRP to enforcement action and possible administrative penalties, or civil penalties as prescribed by state law.

(h) The PRP may elect to allow the executive director to use the WTRF to clean up the illegal waste tire site provided the following conditions are met:

(1) the PRP signs an access agreement granting the executive director or representatives access to the site for removal of the scrap tires or tire pieces;

(2) the PRP signs an agreed order with the commission agreeing to reimburse the WTRF for the amount of costs which the commission has determined the PRP is able to pay; and

(3) the PRP agrees to clean-up the illegal waste tire site of any other municipal solid waste (i.e. - waste other than scrap tires or tire pieces) that may have been improperly disposed of on the property site.

Adopted May 29, 1996

Effective July 1, 1996

**§330.863. Priority Enforcement List (PEL).**

(a) The PEL shall be a list maintained by the executive director containing piles of scrap tires or tire pieces in excess of 500 and defined as illegal waste tire sites identified and classified by the executive director. This list shall be used by the executive director for the assignment of sites to waste tire utilizers. The scrap tires or tire pieces obtained from the PEL sites are eligible for WTRF reimbursement and satisfy the requirements of §330.872(e)(3) of this title (relating to WTRF Program Operation).

(b) The PEL may be updated and published quarterly by the executive director. The PEL will be published in the Texas Register in accordance with the Administrative Procedure Act, Texas Government Code Annotated, §2001 et seq. (Vernon 1993).

(c) The PEL shall be subdivided on a region basis based on the number and location of the waste tire utilizers, and the number and location of illegal waste tire sites per region. If the number of scrap tires or tire pieces located in a specific region of the state is not sufficient to sustain the minimum 15% maximum 30% requirement of PEL tires to insure reimbursement eligibility, the waste tire utilizers shall be required to obtain the minimum 15% maximum 30% requirement of PEL tires from another region of the state.

(d) The executive director may, on an as needed basis, and with notice, reassign or assign additional utilizers to any PEL site identified and assigned in the state. If the PEL site is reassigned the executive director shall assign a new site to the waste tire utilizer to insure that the entity is still eligible for reimbursement under the WTRF, provided the entity meets the other program requirements as contained in this subchapter.

(e) Members of the commission, employees or agents of the commission, and authorized waste tire utilizers or their subcontractors are entitled to enter any public or private property at any reasonable time for the purpose of inspecting, investigating, or remediating any condition related to illegal dumping of scrap tires.

(f) An authorized waste tire utilizer or subcontractor is entitled to enter property only at the commission's direction. The executive director shall give notice of intent to enter private property for those purposes by certified mail to the last known address indicated in the current county property records at least ten days before a commission member, commission employee or agent, or authorized utilizer or subcontractor enters the property. A commission member, commission employee or agent, or authorized utilizer or subcontractor who, acting under this subsection, enters private property shall:

(1) observe the establishment's rules concerning safety, internal security, and fire protection;  
and

(2) if the property has management in residence, make a reasonable attempt to notify the management or person in charge of the entry and exhibit credentials.

(g) Authorized utilizers and their subcontractors shall not be considered agents of the state and are solely responsible for their own actions and actions of their agents.

Adopted May 29, 1996

Effective July 1, 1996

**§330.864. Ranking of Illegal Waste Tire Sites.**

(a) Once an illegal waste tire site has been identified by the executive director, the executive director shall investigate the illegal waste tire site to rank it on a scale of 1 to 10, with 1 being lowest for each of the following conditions:

(1) the illegal waste tire site location, to determine the potential hazard to human health and the environment based on location of the site, and site proximity to residences, businesses, or agricultural land;

(2) the area climate, to determine whether the climatic conditions of the area will promote the development of potential health and environmental problems at the site;

(3) the approximate number and condition of the whole used or scrap tires or tire pieces on the site, to determine the severity of the tire problem; and

(4) the PRP, to determine, using a ranking of 1 for a known or identified PRP, or 10 if no known PRP can be identified, how the site came into existence and who was responsible for creation of the site.

(b) Illegal waste tire sites that are eligible for the PEL will be ranked in accordance with the numerical ranking system described in subsection (a) of this section. The numerical ranking for the location of the illegal waste tire site, climate of the area, identification of a PRP and severity of the waste tire problem at the site will be added together to obtain the overall numerical ranking.

(c) The overall numerical ranking of an illegal waste tire site will determine its placement on the PEL and the speed with which assignment to a waste tire utilizer will occur and clean-up will begin

Adopted May 29, 1996

Effective July 1, 1996

**§330.865. Contracting of PEL Sites.**

(a) After an illegal waste tire site has been placed on the PEL, unless the executive director proceeds with a competitive bid process for the site, the executive director shall assign one or several PEL sites to a waste tire utilizer. The waste tire utilizer shall not contact the PEL site property owner prior to site assignment by the executive director.

(b) Any waste tire utilizer registered by the executive director to participate in the WTRF shall receive reimbursement from the WTRF if the following requirements are met:

(1) The waste tire utilizer shall prepare, implement and comply with a clean-up plan and time schedule for conducting the clean-up and removal of all scrap tires or tire pieces from the site.

(2) The waste tire utilizer shall submit the clean-up plan and time schedule to the commission's region office for approval and to the property owner for review, if requested by that property owner.

(3) A waste tire utilizer shall agree by signing the Site Clean-Up Agreement to indemnify and hold harmless the commission and all of its employees and officers against any and all liability, loss, or damage arising out of, or incident to, any work performed pursuant to this subchapter.

(4) The property owner shall agree, by signature on the Access Agreement to hold the commission harmless of any damages caused by the waste tire utilizer or the crews employed by either the waste tire utilizer.

(5) The waste tire utilizer shall agree in writing to remove all scrap tires and tire pieces from the site and to comply with all requirements contained in this subchapter.

(6) The property owner shall sign an access agreement prepared by the executive director granting the executive director full authority to authorize the waste tire utilizer personnel to enter the site, and initiate and complete the clean-up activities.

(7) The waste tire utilizer shall complete the clean-up of the assigned illegal waste tire site prior to the waste tire utilizer being eligible to participate in the clean-up of subsequent PEL sites that may be contracted or assigned by the executive director.

(c) If the executive director determines that an illegal waste tire site on the PEL contains more scrap tires or tire pieces than any single waste tire utilizer is able to collect and utilize within a reasonable period of time, or if the proposed schedule received from the waste tire utilizer indicates significantly longer time frames for total clean-up of the illegal waste tire site than is acceptable to the executive director, the executive director may decide to assign more than one waste tire utilizer to collect and utilize the scrap tires or tire pieces from the site.

(d) Waste tire utilizers that elect to participate in the WTRF program will be contracted or assigned PEL sites to cleanup by the executive director after April 1, 1992, provided all of the following criteria has been submitted to and approved by the executive director:

(1) the clean-up plan and time schedule required by §330.868 of this title (relating to Approval to Collect and Utilize Tires from PEL Sites) has been approved by the executive director;

(2) the property owner has reviewed the clean-up plan and time schedule and has signed the required access agreement allowing access to the PEL site;

(3) the waste tire utilizer has signed the Site Clean-Up Agreement and returned it to the executive director;

(4) the executive director has approved the Site Clean-Up Plan and authorized the initiation of the clean-up activities by the waste tire utilizer;

(5) sufficient funds are available in the WTRF to enable reimbursement to the waste tire utilizer;

(6) all scrap tires or tire pieces regardless of the weight, size or the condition of such tires or pieces shall be removed by the waste tire utilizer from the site during the clean-up process. There shall be no exception to this requirement unless specifically authorized by the commission's region staff and noted in the Site Clean-Up Plan; and

(7) the waste tire utilizer is in compliance with the applicable requirements of this subchapter and on schedule with any other PEL site clean-up plans and time schedules.

**§330.866. Pre PEL Clean-Up Responsibilities.**

(a) Within ten days of notification by a waste tire utilizer that the contracted or assigned PEL site clean-up was completed and the total number of scrap tires or tire pieces have been removed from the site, the executive director shall be contacted by the waste tire utilizer in order to begin a job performance evaluation to determine whether the clean-up on previously assigned PEL sites was performed to the executive director's satisfaction. After the executive director determines satisfactory work performance, the waste tire utilizer shall be notified in writing of their assignment of one or more new PEL sites for clean-up or informed at a later date through a request for proposal that new PEL sites will be contracted for cleanup. Whether the PEL site is assigned or contracted, the original Site Clean-Up Agreement will be delivered to the waste tire utilizer. The Site Clean-Up Agreement shall be signed by an authorized representative of the waste tire utilizer immediately upon receipt and returned to the executive director.

(b) Following the executive director's receipt of the signed Site Clean-Up Agreement and after the executive director's inspection of the PEL site with the waste tire utilizer in attendance to determine the approximate number of scrap tires or tire pieces at the site, and the approximate time it will take to clean-up the site, the waste tire utilizer shall submit for review and approval the items required in §330.868 of this title (relating to Approval to Collect and Utilize Tires from PEL Sites). Following approval of the Site Clean-Up Plan, the waste tire utilizer will be authorized to clean-up the newly assigned or contracted PEL site(s).

Adopted May 29, 1996

Effective July 1, 1996

**§330.867. Site Clean-Up Agreement.**

(a) Waste tire utilizers that are registered with the executive director and that intend to receive reimbursement from the WTRF for the utilization of scrap tires or tire pieces shall enter into a Site Clean-Up Agreement (agreement) as a guarantee of job performance.

(b) The agreement shall require, at a minimum, the following:

(1) that the waste tire utilizer shall clean-up all PEL sites assigned or contracted, and listed in the agreement;

(2) that the term "clean-up of the site" shall constitute satisfactory completion of those requirements stated in §330.868 of this title (relating to Approval to Collect and Utilize Tires from PEL Sites);

(3) that the waste tire utilizer shall obtain a verbal or written contract or agreement with the property owner that states the conditions by which the waste tire utilizer will be granted access to the PEL site;

(4) that the waste tire utilizer shall meet with the commission's region office prior to initiation of site clean-up and shall agree upon a clean-up plan as required by §330.868 of this title (relating to Approval to Collect and Utilizes Tires from PEL Sites);

(5) that failure to clean-up the PEL site as required by the agreement shall result in waste tire utilizer ineligibility for reimbursement from the WTRF until such time as the clean-up of the PEL site is completed to the satisfaction of the executive director; and

(6) upon executive director's determination of satisfactory clean-up from the waste tire utilizer, the executive director may assign, or offer through a contract, additional PEL sites to the waste tire utilizer pursuant to §330.866 of this title (relating to Pre PEL Clean-Up Responsibilities).

(c) Should the waste tire utilizer's registration to utilize scrap tires or tire pieces be suspended or revoked by the executive director pursuant to §330.843(g) of this title (relating to Waste Tire Facility Registration) and §330.859 of this title (relating to Penalties for Owners or Operators of Waste Tire Recycling Facilities, Waste Tire Energy Recovery Facilities, Waste Tire Transfer Stations or Collection Centers, and Waste Tire Transportation Facilities), then the PEL sites remaining in the Site Clean-Up Agreement shall be reassigned or rebid.

Adopted May 29, 1996

Effective July 1, 1996

**§330.868. Approval to Collect and Utilize Tires from PEL Sites.**

(a) Prior to utilizing scrap tires or tire pieces from any PEL site, a waste tire utilizer shall provide a clean-up plan and a time schedule for completing the clean-up of all scrap tires or tire pieces from the PEL site. Clean-up activities shall commence only after the submitted plan and schedule have been approved by the commission's region office and the provisions of §330.865 of this title (relating to Contracting of PEL Sites) have been met.

(b) If the executive director finds that any of the schedule related information described in subsection (c)(1)-(8) of this section to be unacceptable, an amended clean-up plan or time schedule shall be negotiated between the commission's region office and the waste tire utilizer before additional scrap tires or tire pieces are removed from the PEL site for utilization.

(c) The Site Clean-Up Plan submitted by a waste tire utilizer shall, at a minimum, include the following:

- (1) the estimated number of scrap tires or tire pieces collected;
- (2) the approximate number of days required to complete the site clean-up, however, if more scrap tires or tire pieces are located on the PEL site than the original number of tires used to calculate the overall project length, a correction factor may be applied, following verification and approval from the commission's region office;
- (3) the date, or range of dates that work on the PEL site shall commence;
- (4) the waste tire utilizer registration number;
- (5) the name under which the waste tire utilizer registration number was issued;



(6) a health and safety plan shall be included to identify, at a minimum, the following:

(A) how water shall be provided to the site workers while at the PEL site;

(B) a discussion of the manner in which vectors will be controlled at the PEL site;

(C) the emergency routes to the nearest hospital with a map outlining the route kept in a designated vehicle at all times;

(D) the safety or protective garments that will be provided to the PEL site workers to ensure their safety. At a minimum, gloves and back supports must be made available to the workers loading the whole used or scrap tires or tire pieces into the vehicles for transport; and

(E) rest room facilities must be provided to the PEL workers at PEL sites containing more than 50,000 tires or at PEL sites that are expected to take more than one week to complete clean-up;

(7) each load of scrap tires or tire pieces transported from a PEL site shall be manifested showing the PEL site name and identification number on the lines designated company name and registration number, respectively; and

(8) a discussion stating whether the PEL site is suspected to have tires buried or submerged on-site. The discussion will state that should the PEL site contain tires buried in the ground or tires submerged under water, then the depth that the waste tire utilizer will dig to retrieve and remove those scrap tires or tire pieces from the site shall not be in excess of six feet.

Adopted May 29, 1996

Effective July 1, 1996

**§330.869. Post PEL Clean-Up Responsibilities.**

Once a PEL site has been cleaned up under the requirements of the waste tire recycling fund (WTRF) program as described in §§330.871 - 330.879 of this title (relating to the Waste Tire Recycling Fund (WTRF); WTRF Program Operation; Public Notice of Intent to Operate; WTRF Grants; Confidentiality; WTRF Reimbursement Policies and Procedures; Transfer of Appropriated Funds Within the WTRF; Special Authorization Tires; and Community Service) property owners shall not be eligible for future clean-up assistance as a result of further tire disposition on the owners' property.

Adopted May 29, 1996

Effective July 1, 1996

**§330.870. Authority of Commission Personnel.**

(a) The assigned waste tire utilizer shall report on the status of the clean-up activities at the PEL site to the designated commission personnel in the time frame and manner requested by such personnel.

(b) The executive director shall have the authority to suspend clean-up activities at a PEL site following a determination of whether the conditions and/or activities at the PEL site or other circumstances warrant the

temporary suspension of clean-up activities to ensure the protection of public health and safety and the environment.

(c) The commission may, with the funds available to the commission from the WTRF as specified in §330.861(g) of this title (relating to Priority Enforcement List (PEL) Program), undertake immediate remediation of a site if, after investigation, the commission finds:

(1) that there exists a situation caused by the illegal dumping of scrap tires that is causing or may cause imminent and substantial endangerment to the public health and safety or the environment; and

(2) the immediacy of the situation makes it prejudicial to the public interest to delay action until an administrative order can be issued to potentially responsible parties or until a judgment can be entered in an appeal of an administrative order.

(d) If a person ordered to eliminate an imminent and substantial danger to the public health and safety or the environment has failed to do so within the time limits specified in the order or any extension of time approved by the commission, the commission may implement a remedial program for the site.

(e) The commission may bring suit against a potentially responsible party to recover reasonable expenses incurred in undertaking immediate removal under subsection (c) of this section, or in implementing a remedial action order under subsection (d) of this section. For purposes of this subchapter, the commission shall employ the following three criteria to determine whether a person is a potentially responsible party:

(1) the person must be the property owner of record, the site operator, or the depositor of the scrap tires on the site;

(2) the person must have benefitted financially from the disposition of the scrap tires on the site; and

(3) the person must be financially capable of paying all or part of the costs of the cleanup as determined by the commission.

(f) The commission shall file the suit to recover costs not later than one year after the date removal or remedial measures are completed.

(g) Money collected in a suit to recover costs shall be deposited to the credit of the WTRF.

(h) The commission, in lieu of bringing suit to recover costs incurred under this subchapter, may file a lien against the property on which the site is located. The lien shall state the name of the owner of the property, the amount owed, and the legal description of the property. The lien arises and attaches on the date the lien is filed in the real property records of the county in which the property is located. The lien is subordinate to the rights of prior bona fide purchasers or lienholders on the property.

**§330.871. Waste Tire Recycling Fund (WTRF)**

(a) Applicability. The regulations contained in these sections establish standards and procedures for the operation of the WTRF program.

(b) Responsibility.

(1) Each waste tire utilizer that participates in the WTRF program shall operate in compliance with the provisions of this subchapter. The waste tire utilizer shall comply with all provisions of this subchapter at each existing registered facility prior to receiving final approval from the executive director to operate any new or additional facility.

(2) Waste tire facilities, waste tire recycling facilities and waste tire energy recovery facilities may not receive reimbursement under the WTRF for utilizing scrap tires, scrap tire pieces or shredded tires pieces generated out-of-state.

(3) The executive director requires that all tires on which the WTRF fee is assessed for the replacement tire shall be subject to the free collection and transportation of those scrap tires from the generator's place of business, provided the generator is a wholesale or retail dealer of tires.

(4) If a WTRF fee is assessed on a replacement tire, then the tire that was disposed of as a waste tire shall not be charged an additional disposal fee by the wholesale or retail dealer of the tire.

(5) A whole used or scrap tire that does not fit the criteria for assessment of the WTRF fee as defined in §330.872(d) of this title (relating to WTRF Program Operation), shall not be eligible for reimbursement under the WTRF.

(6) The WTRF shall maintain a balance of not less than \$500,000.

(7) If the commission has reason to believe that the money appropriated from the fund will fall below \$500,000, the executive director shall suspend the requirement to reimburse priority enforcement list tires, limit the number of tires for which a waste tire facility will be reimbursed and discontinue paid carryover.

(8) The executive director shall not reimburse a waste tire utilizer for utilizing scrap tires if the executive director determines that the utilizer:

(A) has not provided adequate financial assurance, if necessary; or

(B) does not have adequate fire protection; or

(C) is causing an imminent danger to public health or welfare.

(9) Under normal operating conditions, the WTRF program forwards all requests for reimbursement on the 20th day of the month for further consideration. If the commission region office or central office program staff have not been able to review and approve all information contained in the monthly

reimbursement documents because of mathematical or credit errors, or incomplete or inaccurate reports by the waste tire utilizer, the reimbursement will be delayed until the corrected or additional information requested by the executive director has been submitted, reviewed and approved.

(c) New or expanded shredding operation. A new waste tire facility that seeks to establish a new or expanded shredding operation in the state must:

(1) certify that the waste tire facility is willing to provide collection and transportation of tires from registered generators in rural counties of the state at the request of the commission during emergency periods as defined by the commission when such generators are not being otherwise served by registered shredders or transporters; and

(2) identify and provide a contract or agreement for delivery of all shredded tire pieces from a legitimate end user in the application for registration.

Adopted May 29, 1996

Effective July 1, 1996

**§330.872. WTRF Program Operation.**

(a) Purpose. The purpose of the WTRF is to promote the utilization of scrap tires, scrap tire pieces or shredded tire pieces within the boundaries of the State. It is the commission's intent that the material contained in tires be effectively reused, recycled, or used in energy recovery facilities.

(b) Objectives. The objectives of the WTRF program are to clean-up illegal waste tire sites that contain scrap tires or tire pieces, to collect scrap tires or tire pieces that are generated in Texas on a daily basis prior to being deposited at an illegal waste tire site, and to aid in the development of industries and businesses that recycle, reuse or recover the energy from scrap tires or shredded tire pieces.

(c) Scrap tire category. The scrap tires or tire pieces that have been determined by the executive director to be eligible for reimbursement within the WTRF program are categorized as follows:

(1) scrap tires or tire pieces from illegal waste tire sites and certain legal waste tire storage sites listed on the PEL;

(2) scrap tires from a generator in Texas that accumulates the scrap tires on a daily basis; and

(3) scrap tires or tire pieces from sources other than those indicated in paragraphs (1) and (2) of this subsection, as approved by the executive director. For the purposes of this subchapter and the WTRF program, scrap tires or tire pieces in this third category shall be called special authorization tires. For a complete explanation of special authorization tires refer to §330.878(a)-(i) of this title (relating to Special Authorization Tires).

(d) Resale. A wholesale or retail dealer who sells or offers to sell tires not for resale shall collect at the time and place of sale a waste tire recycling fee for each tire sold in accordance with paragraphs (1)-(3) of this

subsection . The sale of a tire as original equipment in the manufacture of a new vehicle is a sale for resale and is not subject to a fee. A fee may not be assessed for bicycle tires or for recapped or retreaded tires.

(1) \$2.00 for each new tire and \$1.00 for each good used tire that has a rim diameter of 12 inches or more but less than 17.5 inches;

(2) \$3.50 for each new tire that has a rim diameter of 17.5 inches or greater, other than an off-the-road tire intended for use on heavy machinery, including an earthmover, a loader/dozer, a grader, or mining equipment as defined in subsection (h) of this section; and

(3) \$2.00 for a new motorcycle tire, regardless of the rim diameter.

(e) Operation of the WTRF program.

(1) Scrap tires and scrap tire pieces generated in Texas, removed from Texas, and subsequently reintroduced to Texas shall be considered out-of-state tires for the purpose of this subchapter and therefore ineligible for reimbursement.

(2) A waste tire utilizer that in any month utilizes between 15% and 30% PEL tires shall be reimbursed only for 15% and shall receive credit for the amount in excess of 15% up to 30%. Any PEL tires utilized over the maximum monthly limit of 30% will not be eligible for reimbursement.

(3) A waste tire utilizer shall utilize at least 50 % of the monthly weight of scrap tires or scrap tire pieces needed from generator sites unless the commission suspends the 50 % requirement due to identified service needs contained in a contract for cleanup of PEL sites.

(4) No entity may knowingly accept and dispose of scrap tires, scrap tire pieces, or shredded tire pieces that are eligible for reimbursement or for which reimbursement from the WTRF has been paid in a landfill, including a tire monofill.

(5) A waste tire utilizer shall submit the reimbursement request on a payment voucher to the executive director on a monthly basis. The payment voucher form shall be supplied by the executive director, or on a voluntary basis, supplied on a removable storage medium stored in an industry standard file format acceptable to the executive director. Use of such removable storage mechanism must first receive executive director approval.

(6) A waste tire utilizer shall maintain and retain originals of all reimbursement records for a period of three years and shall make such records available to the executive director for review upon request.

(7) Not later than the tenth day of the month following the month during which the waste tire utilizer used the scrap tires or tire pieces, the commission's region office shall inspect the documentation submitted by the waste tire utilizer as support for the reimbursement voucher request. The voucher request shall be signed by the waste tire utilizer and submitted to the commission's region office for overnight mailing to the central office for review. The reimbursement voucher request shall be submitted on a form to be provided by the executive director or on a removable storage medium stored in an industry standard file form approved by the

executive director. The total pounds of scrap tires or tire pieces utilized by the waste tire utilizer during the previous calendar month shall be reported separately as the total pounds of tires from PEL, generator and special authorization sites during the calendar month.

(f) Reimbursement restrictions. The WTRF shall not be used to reimburse for utilization of:

- (1) innertubes;
- (2) scrap rubber products;
- (3) green tires;
- (4) industrial solid waste, excluding waste tires;
- (5) oversized tires, as defined by commission rule, unless the oversized tires are collected from a PEL site;
- (6) manufacturer reject tires; or
- (7) nonpneumatic tires.

(g) Reimbursement requirement. A waste tire utilizer must notify and request that the commission regional office perform an inspection and records review within 60 days of utilizing the scrap tires or shredded tire pieces in order to receive reimbursement for the utilized scrap tires or shredded tire pieces. After 60 days, the scrap tires or shredded tires pieces are no longer eligible for reimbursement by the WTRF.

(h) Off-the-road tires. For the purpose of this subchapter, off-the-road tires shall be those tires used on heavy machinery, including earthmovers, loader/dozers, graders, and mining equipment. Truck and agricultural implement tires shall not be classified as off-the-road tires and thus are eligible for the \$3.50 fee and free-of-charge off-site transportation.

Adopted May 29, 1996

Effective July 1, 1996

**§330.873. Public Notice of Intent to Operate.**

(a) Waste tire utilizers that are registered with the executive director that apply for a grant or receive reimbursement from the WTRF shall publish notice in a local area newspaper where they intend to utilize scrap tires or tire pieces prior to commencement of operation. Subject to executive director approval, a variance to the public notice requirement may be requested provided that similar notice has been published within the previous 12-month period and that the notice was associated with activities under the jurisdiction of this subchapter.

(b) Waste tire facilities that are registered with the executive director and have submitted an application amendment to request a variance from the 8,000 square feet pile size shall publish notice of intent to increase the pile size in accordance with this section.

(c) The notice of intent published by the waste tire utilizer shall contain at a minimum the following information:

- (1) the facility registration number;
- (2) the name under which the facility registration number was issued;
- (3) the permanent street address and telephone number of the facility;
- (4) a brief statement explaining the utilization activities the facility intends to perform at the location;
- (5) where the tires intended for utilization or already utilized will be stored, if different from the actual facility site; and
- (6) the number of tire piles planned for the storage facility and the square footage of the largest pile planned.

(d) The public notice of intent to operate shall identify the Texas Natural Resources Conservation Commission as the state agency administering the WTRF.

(e) The public notice of intent shall be published in the legal section of a local area newspaper at least five days prior to commencing activities. The public notice of intent shall be published for a period of 10 days continuously.

(f) Waste tire storage facilities that are registered with the executive director and intend to store scrap tires, tire pieces, or shredded tires pieces that were reimbursed from the WTRF, shall publish such intent in a local newspaper in the area where the waste tire storage facility is located prior to commencement of storage described in subsection (c)(1)-(3) of this section.

Adopted May 29, 1996

Effective July 1, 1996

**§330.874. WTRF Grants.**

(a) The commission shall adopt programs to provide grants to registered waste tire recycling facilities and waste tire energy recovery facilities to promote end use markets by enabling such facilities to use whole tires or tire shreds to make recycled products or to burn as tire derived fuel. Rules specifically addressing the recycling construction grants and the whole tire or shredded tire retrofitting grants may be found in Subchapter V of this title (relating to Waste Tire Recycling and Energy Recovery Grants).

(b) The grant rules will identify eligible retrofitting costs, transportation costs and a process for determining such costs. Eligible costs are those that are necessary to retrofit and enable the facility to store and use whole tires or shredded tires as fuel. These eligible costs may include: engineering, design, equipment, capital investment, installation, permitting, testing, and fees if defined by the executive director and contained in the Request for Proposal or the Request for Application. The transportation costs include the cost to the waste tire

energy recovery facility for transporting the tires from the PEL or generator location to the facility site at a rate not to exceed 35 cents per tire.

(c) As a condition of receiving a retrofitting grant, a minimum of 80% of the grant applicant's annual consumption of tires shall be generated from within the state until December 31, 1997 or until the WTRF program is sunset by legislation, whichever occurs first.

Adopted May 29, 1996

Effective July 1, 1996

**§330.875. Confidentiality.**

(a) Recycling or end use information submitted by waste tire facilities, waste tire energy recovery facilities, waste tire recycling facilities, or waste tire storage facilities to the executive director in accordance with §361.477(g) or §361.486(a) or (d) of the Texas Health and Safety Code and any report generated by the executive director based on the information may be determined by the commission to be confidential pursuant to the Solid Waste Disposal Act, Texas Health and Safety Code, §361.493 and the Texas Open Records Act, Government Code, §552.001 et seq. and thus not subject to disclosure.

(b) In order to protect confidential information, a waste tire facility, waste tire storage facility, waste tire energy recovery facility, or waste tire recycling facility shall clearly mark and identify any information that is submitted and claimed to be subject to nondisclosure by labeling the information or report confidential.

(c) The executive director shall, upon receipt, protect such information by ensuring that appropriate measures are taken to prevent the disclosure or review of the information by the general public, regulated community or other interested parties.

(d) The cover letter shall indicate that the information is confidential and if the confidential information is contained in a single document every page should be labelled, if the confidential information is contained in multiple documents then the first page of each document.

Adopted May 29, 1996

Effective July 1, 1996

**§330.876. WTRF Reimbursement Policies and Procedures.**

(a) To be eligible to receive reimbursement for the utilization of scrap tires or tire pieces, waste tire utilizers shall, at their own expense, provide:

(1) all payments to registered waste tire transporters covering the expenses associated with the shipment of scrap tires from wholesale or retail tire dealers located in Texas to any registered waste tire utilizer;

(2) all payments to registered waste tire transporters covering the expenses associated with the shipment of scrap tires or tire pieces from any PEL site to any registered waste tire utilizer;



(3) all payments to laborers, equipment operators, or other employees whose services may be needed in order to comply with the PEL site clean-up requirements described in §330.868 of this title (relating to Approval to Collect and Utilize Tires from PEL Sites); and

(4) all payments associated with the acquisition, maintenance, and operation of any equipment or machinery needed to comply with the PEL site clean-up requirements described in §330.868 of this title (relating to Approval to Collect and Utilize Tires from PEL Sites) and collection and transportation of generator and special authorization tires.

(b) Shredded tire pieces for which reimbursement under this subchapter is being sought must meet the minimum size requirement of an industry standard two-inch minus particle size or, if approved by the executive director, to an alternative particle size set by a contract requirement related to recycling or end use of the particles.

(c) Except as provided by §330.841(j) of this title (relating to Waste Tire Facility Processors of Scrap Tires) an entity registered under the WTRF, shall not receive, directly or indirectly, more than \$.80 per weighed tire unit from the WTRF for any activities performed pursuant to this subchapter except when the cleanup of PEL sites is through a competitive bid process pursuant to §330.861(c)-(g) of this title (relating to Priority Enforcement List (PEL) Program).

(d) The waste tire facility shall maintain the required financial assurance to cover the closure cost for the scrap tires, tire pieces or shredded tire pieces shredded during that month.

(e) The waste tire facility has provided adequate fire protection. Oversize and overheight piles, and fire lanes less than the required width or blocked constitute inadequate fire protection.

(f) A waste tire facility shall only receive reimbursement once for the shredding of scrap tires, scrap tire pieces or shredded tires pieces.

Adopted May 29, 1996

Effective July 1, 1996

**§330.877. Transfer of Appropriated Funds Within the WTRF.**

(a) For performing duties related to the WTRF, each fiscal year the Comptroller may expend up to \$680,000 or an amount equal to 2.0% of the WTRF whichever is greater.

(b) For administering the WTRF program, each year the commission may expend not more than the lesser of \$2.05 million or 6.0% of the amount appropriated from the WTRF.

(c) Each fiscal year the commission may not expend more than \$1.4 million for paying accrued carryover credits, \$15.2 million to waste tire facilities for tire shredding, \$3.52 million for cleanup and closure of PEL sites, \$2 million to waste tire recycling facilities for construction grants, \$600,000 for reimbursements to waste tire energy recovery facilities retrofitted to burn tire shreds and \$6 million to waste tire energy recovery facility grants for retrofitting to burn whole or shredded tires.

(d) On or before May 30 of each fiscal year, the executive director shall prepare a report addressing the need, if it exists, to transfer funds from one category listed in subsection (c) of this section to another in order to promote recycling and energy recovery. The report shall also include any recommendations regarding the transfer of unused funds and the basis for the recommendations. The report will identify the amount of fees collected to date and deposited in the WTRF, the amount of fees estimated to be collected and deposited in the WTRF for the remainder of the fiscal year, the amount of appropriated funds requested or applied for, and the amount of appropriated funds reimbursed or awarded to each of the following:

- (1) waste tire facilities shredding tires;
- (2) waste tire energy recovery facilities burning shredded tires as fuel;
- (3) waste tire energy recovery facilities seeking grants (as a lump sum) to burn shredded tires as fuel;
- (4) waste tire energy recovery facilities seeking grants (as a lump sum or on a per tire basis) to burn whole tires as fuel; and
- (5) waste tire recycling facilities seeking grants to aid in the construction of such facilities.

(e) The public shall be provided at least 20 days to comment on the executive director's report. The comment period will begin on the date that the executive director publishes notice of the availability of the report in the *Texas Register*.

(f) Following the comment period, and on or before June 1 of each fiscal year, the executive director's report shall be set on agenda for commission consideration.

(g) Based on the executive director's recommendations, the commission may transfer some or all of the unused amounts between categories of persons eligible to receive money from the WTRF if the commission determines that:

- (1) legitimate grants or reimbursement requests anticipated during the remainder of the fiscal year from the category of eligible persons from whom the transfer of unused funds is recommended or proposed will not exceed the money allocated to that same category of eligible persons;
- (2) legitimate grants or reimbursement requests anticipated during the remainder of the fiscal year for the category of eligible persons to whom the transfer of unused funds is recommended or proposed will exceed or has exceeded the money allocated to that same category of eligible persons;
- (3) the transfer of funds will promote recycling and energy recovery; and/or
- (4) other relevant factors, as the commission determines, that might warrant the transfer of funds.

**§330.878. Special Authorization Tires.**

(a) The TNRCC allows, based on executive director approval, the eligibility for reimbursement by the WTRF of certain whole used or scrap tires or tire pieces from sources other than tires and generator tires.

(b) The WTRF program defines this category of executive director approved tires as special authorization tires.

(c) Effective July, 1, 1992, four categories of special authorization tires have been designated:

(1) government - All tires collected from governmental entities (cities, counties, state, federal, etc.), including those from government fleet vehicles;

(2) community clean-up - Those tires collected as a result of community cleanup projects with an approval letter from the WTRF program;

(3) unmanifested - Fifty (50) or less tires brought directly to a waste tire utilizer by a citizen who is not a generator as defined in §330.805(a) of this title (relating to Generators of Scrap Tires); and

(4) region letter - More than 50, but less than 500 tires brought directly to a waste tire utilizer by a citizen or by a registered transporter, or by a utilizer who is a registered transporter, or a citizen who is not a generator as defined in §330.805(a) of this title (relating to Generators of Scrap Tires), with a letter from the designated TNRCC region office approving the tires as eligible for reimbursement.

(d) A separate category for special authorization tires must be maintained in the daily log. All special authorization tires accepted daily shall be recorded in that category of the daily log.

(e) Government tires shall continue to be manifested using the government entity's generator number.

(f) The WTRF program will prepare an approval letter for each community clean-up project which shall be presented to the waste tire utilizer upon collection of the scrap tires. The waste tire utilizer the community selected to execute its clean-up project shall provide a manifest form for each load of tires transported from the clean-up project. The approval letter and the manifest forms shall be included in the waste tire utilizer's monthly record keeping to ensure reimbursement from the WTRF.

(g) Unmanifested tires may be eligible for WTRF reimbursement provided there are less than 50 tires from a non-generator. The acceptance of such scrap tires by a waste tire utilizer shall be recorded on the daily log.

(h) Scrap tire piles containing greater than 50 tires but less than 500 tires can be disposed of providing the appropriate commission region office is notified and requested to perform an inspection of the site. An approval letter may be issued by the region office authorizing the removal of the scrap tires from the site and confirming that the utilization of the scrap tires shall be reimbursed by the WTRF. The waste tire utilizer accepting the scrap tires must, at the same time, receive the commission region office approval letter to insure reimbursement will occur. The waste tire utilizer shall include the approval letter in their monthly record keeping.

(i) In accordance with established guidelines, scrap tires currently classified as special authorization tires may be designated as PEL tires.

Adopted May 29, 1996

Effective July 1, 1996

**§330.879. Community Service.**

(a) All entities that apply for reimbursement from the WTRF, whether in the form of a grant application, contract bid or reimbursement request, shall perform community service on an annual basis. Community service relating to tires and the goals of the WTRF Program shall include, but not be limited to, cooperation with local civic groups to cleanup abandoned tire sites that are not classified as PEL sites as identified in §330.861 of this title (relating to Priority Enforcement List (PEL) Program) and §330.863 of this title (relating to Priority Enforcement List (PEL)); and are for the purpose of this subchapter defined as special authorization tires.

(b) All entities that apply for reimbursement from the WTRF, whether in the form of a grant application, contract bid, or reimbursement request shall on August 31 each fiscal year submit a written report to the executive director identifying and describing the community service performed the previous fiscal year. The written report shall be in the format provided by the executive director.

(c) Any entity required to perform community service on an annual basis and failing to report same as required in subsection (b) of this section shall be in violation of the requirements of this chapter and subject to any action authorized by law to secure compliance, including the assessment of administrative or civil penalties prescribed by law. In addition, the commission, after notice and opportunity for a hearing, may suspend a registration of reimbursement to such person upon the initiation of an enforcement proceeding for violation of this section.

Adopted May 29, 1996

Effective July 1, 1996

**§330.880. Executive Director's Regional Site Directive or Central Office Report.**

(a) Upon completion of a WTRF records review inspection at the regional level the executive director shall prepare an inspection report indicating that a review of the documentation to support the requested reimbursement from the WTRF has been conducted. If the executive director finds that any voucher should not be paid or not paid in the full amount requested, the executive director shall prepare a interoffice memorandum briefly stating the reasons the documentation does not support the request for reimbursement. That memo shall be attached to and submitted with the records review inspection report and the reimbursement voucher request. In addition, if the executive director determines that the voucher should not be paid or not paid in full, the executive director shall complete and leave with the waste tire utilizer's designated responsible person on site a Site Directive indicating the reasons the documentation does not support the request for reimbursement.

(b) Upon completion of the WTRF reimbursement voucher review by the WTRF Central Office staff, the executive director may prepare an interoffice memorandum confirming that the reimbursement voucher review has been conducted based on the records review inspection and on the waste tire utilizer's compliance with the following items:

- (1) the voucher amount is checked to ensure the calculated amounts are correct;
  - (2) if applicable, the request for reimbursement does not exceed the waste tire utilizer's monthly allocation, if allocation is in effect;
  - (3) if applicable, the carryover amounts for Priority Enforcement List (PEL), generator, and special authorization waste tire units are correct;
  - (4) the waste tire utilizer monthly operations report has been received and is complete, accurate, and continuous with the previous month's report, and records review inspection report;
  - (5) if applicable, the financial assurance deposits are being maintained as required by §§330.885-330.888 of this title (relating to Cost Estimate for Closure; Financial Assurance for Closure; Incapacity of Owners or Operators or Financial Institutions; and Wording of the Instruments);
  - (6) the facility fire protection is being maintained as required by this subchapter; and
  - (7) the facility is in general compliance with the requirements of this subchapter. If the executive director finds that any voucher should not be paid in full or in part based on the review, the executive director shall prepare a report stating that determination which shall be attached to the reimbursement voucher request submitted to the waste tire utilizer. The waste tire utilizer shall receive a copy of the determination made by the Central Office staff.
- (c) The waste tire utilizer shall file a written response within 30 days of receipt of the Central Office Report on a form prescribed or approved by the executive director and such written response shall be submitted to the executive director by certified mail, return receipt requested. If the executive director does not receive a response from the waste tire utilizer within 30 days of receipt of the Site Directive and/or the Central Office Report, the following shall occur:
- (1) all monies withheld from reimbursement voucher request and addressed in the Site Directive or and/or the Central Office Report shall be deemed satisfied in full and therefore ineligible; and
  - (2) waste tire utilizer will waive their rights to object to any item addressed in the Site Directive and/or documented in the Central Office Report.
- (d) If monies are withheld from reimbursement pursuant to Texas Health and Safety Code, §361.486, all otherwise eligible monies shall be reimbursed upon compliance with the statute referenced in this subsection.

Adopted May 29, 1996

Effective July 1, 1996

**§330.881. Protest of Site Directive and/or Central Office Report.**

- (a) If the waste tire utilizer disagrees with any statement contained in the Site Directive and/or Central Office Report, the mobile tire processor or waste tire facility may file a protest with the executive director within

30 days of the date of their receipt of the Site Directive and/or Central Office Report or all statements contained within such report shall be considered to be agreed to and all rights waived as per subsection (c)(2) of this section.

(b) The protest must be in writing and signed by the responsible official for the waste tire utilizer as designated in the approved registration. It must be on a form prescribed or approved by the executive director which are available upon request from the WTRF program and must contain the following information:

- (1) the name, address, physical address and the WTRF registration number; and
- (2) a statement of each disputed item on the Site Directive and/or Central Office Report.

(c) The protest shall be filed with the executive director by sending the protest Certified Mail, Return Receipt Requested, to the Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas, 78711-3087, Attention: WTRF Program, or by delivering the protest in person during regular business hours to the WTRF program office located in the Colonnade Building (Building F), 12015 Park 35 Circle, Austin, Texas 78735.

(d) The waste tire utilizer and the staff of the executive director shall attempt to resolve informally any disputes regarding the Site Directive and/or Central Office Report. If no resolution is reached by the staff of the executive director and the waste tire utilizer, the waste tire utilizer may file a petition requesting the commission to grant relief. Within 45 days of receipt of written notification from the executive director that informal negotiations have ceased and the final informal protest meeting has been held, the waste tire utilizer shall file a petition as specified in §330.882 of this title (relating to Formal Petition).

Adopted May 29, 1996

Effective July 1, 1996

**§330.882. Formal Petition.**

(a) The waste tire utilizer shall file 3 copies of the petition with the chief clerk of the TNRCC in the manner prescribed generally by this title for filing petitions with the commission and waste tire utilizer shall also serve a copy of the petition directly on the executive director.

(b) The petition shall set forth the relief which the applicant requests and shall contain the same information required for the protest, as described in §330.883 of this title (relating to Hearing by the Commission).

Adopted May 29, 1996

Effective July 1, 1996

**§330.883. Hearing by the Commission.**

(a) Following receipt of a petition, the commission shall conduct a hearing on the petition. The proceedings shall be governed by the rules of the commission.

(b) Until such time as a final written decision is made by the commission, no monies withheld as ineligible from the reimbursement voucher by the executive director shall be paid to the waste tire utilizer.

Adopted May 29, 1996

Effective July 1, 1996

**§330.884. End Use Credit System.**

(a) Beginning January 1, 1996, pursuant to §330.843(i) of this title (relating to Waste Tire Facility Registration), the commission will only reimburse a waste tire facility for those shreds the waste tire facility delivers to, or has a contract documenting sale and intent to deliver to, a legitimate end user on a monthly basis.

(b) Effective September 1, 1995, the commission shall implement an end use credit system to accurately document the amount of shredded tire pieces each waste tire facility delivers to a legitimate end user on a monthly basis.

(c) The system shall provide a mechanism to record and track the accumulation of shredded tire pieces actually delivered to an end use on a monthly basis. The waste tire facility will be allowed to use the accrued credits on an as needed basis to insure reimbursement for those new scrap tires collected and shredded monthly.

(d) On a form prescribed by the commission and attached to the monthly operations report, the waste tire facility will document, in pounds, the balance of end use credits unused and carried forward from the previous month, the quantity of shredded tire pieces delivered to an end user, and the type of end user, in the current month, the amount of end use credits needed to insure eligibility for reimbursement for scrap tires shredded in the current month, and the ending balance of unused end use credits to be carried forward to a future month.

(e) If, during any month, the end use credits are exhausted and no new deliveries have been made or no additional contacts for delivery have been secured, the commission will reimburse the waste tire facility for the amount of shredded tire pieces equivalent to the end use credits available, the contracted amount available or will withhold reimbursement until the waste tire facility accrues additional end use credits or obtains an additional contract for delivery within 180 days.

Adopted May 29, 1996

Effective July 1, 1996

**§330.885. Cost Estimate for Closure.**

(a) As part of a facility's registration or permit application, an owner or operator of a Type VIII-R waste tire storage facility or a waste tire facility, and a waste tire recycling facility or a waste tire energy recovery facility with greater than a 30 calendar day supply of scrap tires or scrap tire pieces or shredded tire pieces on site, must prepare a written estimate, in current dollars, of the cost of closing the facility(ies).

(1) The registration closure cost calculation for facilities with tires is determined by the sum of subparagraphs (A), (B), and (C) of this paragraph:

(A) The estimated cost for the maximum number of whole tires generated from out of state stored at the facility is calculated as follows: Number of whole tires generated from out of state and stored at the facility multiplied by \$ .85/tire equals dollar cost estimate.

(B) The estimated cost to transport the maximum site capacity of tires as depicted by the site layout plan to another registered storage site, waste tire recycling facility or waste tire energy recovery facility with documentable available storage capacity by a third party. The estimate shall include equipment and operator time for loading tires.

(C) The estimated cost to complete cleanup of the site of any and all debris, as well as dismantling any equipment used in the processing of whole tires into shreds or used to recycle whole tires or shredded tires into manufactured products and preventing access to the equipment or the cost of removing it from the site to a location acceptable to the executive director. This shall be considered to be a minimum of \$3,000.

(2) The registration closure cost calculation for an in state waste tire facility is determined by the sum of subparagraphs (A) and (B) of this paragraph.

(A) If the waste tire facility has located the shredding equipment at a site different from a registered storage site the criteria in paragraph (1)(A) and (C) of this subsection apply;

(B) The estimated cost to render the shredding equipment unusable and prevent access to the equipment or the cost of removing it from the site to a location acceptable to the executive director.

(b) The registration closure cost estimate must equal the cost of closing the facility based on the maximum number of scrap tires generated from out of state stored at the facility, the maximum number of shredded tire equivalents, and disabling any equipment as disclosed in the facility's registration application. The executive director shall evaluate and determine the amount for which evidence of financial assurance is required and may amend the closure cost estimate provided by the owner or operator.

(c) Any amendment application shall include a recalculation of the registration closure cost estimate based on any requested volume increases. Facilities shall not increase the volume of whole tires generated from out of state and stored at the facility and/or scrap tires until the registration amendment has been approved by the executive director. Only upon approval of the executive director will the amended registration closure cost estimate be the basis for determining financial assurance closure requirements.

(d) The quantities of scrap tires reported on the registration application form and used in the calculation of financial assurance shall be obtained from the site layout plan volumes by using the following conversion factors:

(1) a typical whole tire shall be considered to occupy four cubic feet unless an exact count of all whole tires is to be maintained by an operator;

(2) a cubic yard of tire shreds or pieces shall be considered to weigh 950 pounds per cubic yard;

(3) a weighed tire (waste tire unit or equivalent) shall be considered to be 18.7 pounds of tire pieces; and

(4) the calculated capacity of a site as calculated for the financial assurance may not be exceeded without the submission and approval of an amended registration application specifically including, but not limited



to, new site layout plans to substantiate the revised capacity and new financial assurance calculations based upon the depicted volumetric capacity converted to weights, posting of the revised financial assurance and written approval for the amended registration. The owner or operator is also responsible for submitting a registration amendment to revise the registration closure cost estimate whenever requested to do so by the executive director. Registration amendments with revised registration closure cost estimates shall be submitted to the executive director within 15 days of the executive director's written request to revise the registration closure cost estimate.

(e) The owner or operator must keep at the facility during the operating life of the facility a copy of the latest approved registration closure cost estimate.

Adopted May 29, 1996

Effective July 1, 1996

**§330.886. Financial Assurance for Closure.**

(a) Facilities regulated by this subchapter and requiring financial assurance must establish financial assurance for the closure of each registered or permitted facility. Owners or operators that make an initial request for reimbursement from the waste tire recycling fund before September 1, 1993 must provide financial assurance for the closure of each registered or permitted facility based on the monthly cumulative closure cost estimate defined in §330.3 of this title (relating to Definitions). Owners or operators that make an initial request for reimbursement from the waste tire recycling fund on or after September 1, 1993 must provide financial assurance for closure of each registered or permitted facility based on the full cost estimate for closure as determined in §330.885 of this title (relating to Cost Estimate for Closure).

(b) Owners or operators of privately owned facilities must choose from the options as specified in subsection (e)(1)-(4) of this section. Owners of publicly owned facilities may choose from the options as specified in subsection (e)(1)-(5) of this section. For the purposes of this subchapter, publicly owned facilities refer to waste tire facilities and waste tire storage facilities owned by city or county governments.

(c) The instruments submitted for compliance with this section must be worded exactly as they appear in §330.888 of this title (relating to Wording of the Instruments). All financial assurance documents shall be filed as originally signed copies with the executive director of the Texas Natural Resource Conservation Commission. The executive director will determine the acceptability of both the instrument provided and the institution issuing such instrument.

(d) For purposes of this section, closure is defined as the cost estimate for closure calculations approved by the executive director according to §330.885 of this title (relating to Cost Estimate for Closure). Closure will begin when:

- (1) The executive director deems the facility abandoned; or
- (2) The permit expires, is terminated, or revoked or a new or renewal permit is denied; or
- (3) The registration expires, is terminated, or revoked or a new or renewal registration is denied;

or

(4) Closure is ordered by the Texas Natural Resource Conservation Commission or a United States District Court or other court of competent jurisdiction; or

(5) The owner or operator is named as debtor in a voluntary or involuntary proceeding under Title 11 (Bankruptcy), United States Code.

(e) Financial assurance options.

(1) Closure trust fund.

(A) An owner or operator of facilities regulated by this subchapter and requiring financial assurance may satisfy the requirements of this section by establishing a closure trust fund which conforms to the requirements of this paragraph. An originally signed duplicate of the trust agreement must be submitted to the executive director to receive approval as a registered facility. The trustee must be an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a Federal or State agency.

(B) The wording of the trust agreement must be identical to the wording specified in §330.888(a)(1) of this title (relating to Wording of the Instruments), and the trust agreement must be accompanied by a formal certification of acknowledgement as contained in the example referenced in §330.888(a)(2) of this title (relating to Wording of the Instruments). Schedule A of the trust agreement must be updated within 15 days after an approved change in the amount of the registration closure cost estimate covered by the agreement.

(C) For owners or operators that make an initial request for reimbursement from the waste tire recycling fund before September 1, 1993, payment into the trust fund must be made on the first business day of each month in an amount that when combined with previous monthly payments equals or exceeds the monthly cumulative closure cost estimate. For example, a trust payment made on August 1 when added to previous payments into the trust must equal or exceed the estimated cost of closure of the site on August 31. If a combination of financial assurance instruments is used in accordance with paragraph (6) of this subsection, it is a combination of instruments that must equal or exceed the estimated cost of closure as calculated through the end of the month in which payment is being made. Owners or operators that make an initial request for reimbursement from the waste tire recycling fund on or after September 1, 1993 must provide financial assurance for closure of each registered or permitted facility based on the full cost estimate for closure as determined in §330.885 of this title (relating to Cost Estimate for Closure).

(D) A receipt from the trustee for the initial payment must be submitted by the owner or operator to the executive director with the original copy of the trust agreement. Subsequent monthly trust receipts must be submitted at the executive director's request to the following address: Texas Natural Resource Conservation Commission, Financial Assurance Section (Tires), P.O. Box 13087, Austin, Texas, 78711-3087.

(E) If an owner or operator that makes an initial request for reimbursement from the waste tire recycling fund before September 1, 1993, substitutes other financial assurance as specified in this section for all or part of the trust fund, he may submit a written request to the executive director for approval of the release of the amount in excess of the monthly cumulative closure cost estimate covered by the trust fund.

If an owner or operator that makes an initial request for reimbursement from the waste tire recycling fund on or after September 1, 1993, substitutes other financial assurance as specified in this section for all or part of the trust fund, he may submit a written request to the executive director for approval of the release of the amount equal to the face amount of the substituted instrument.

(F) Within 90 days after receiving a request from the owner or operator for release of funds as specified in subparagraph (E) of this paragraph, the executive director may instruct the trustee to release to the owner or operator such funds as the executive director specifies in writing.

(G) After beginning closure, an owner or operator or any other person authorized by the executive director to perform closure may request reimbursement for closure expenditures by submitting itemized bills to the executive director. Within 60 days after receiving bills for closure activities, the executive director will determine whether the closure expenditures are in accordance with the permit or registration or otherwise justified, and if so, will instruct the trustee to make reimbursement in such amounts as the executive director specifies in writing. If the executive director has reason to believe that the cost of closure will be greater than the value of the trust fund, he may withhold reimbursement of such amounts as he deems prudent until he determines, in accordance with paragraph (8) of this subsection, that the owner or operator is no longer required to maintain financial assurance for closure.

(H) The executive director may agree to termination of the trust when:

(i) An owner or operator substitutes and receives approval from the executive director for alternate financial assurance as specified in this paragraph and paragraphs (2)-(5) of this subsection; or

(ii) The Texas Natural Resource Conversation Commission releases the owner or operator in accordance with paragraph (8) of this subsection.

(I) If an owner or operator that makes an initial request for reimbursement from the waste tire recycling fund before September 1, 1993, fails to make a required monthly payment into the trust or if a deficiency in the fund exists and is not corrected in accordance with subparagraph (C) of this paragraph, the executive director may not pay a waste tire utilizer from the WTRF for tires shredded during the previous calendar month. If either circumstance occurs more than once within a twelve month period, the executive director may revoke the owner's or operator's registration and require immediate closure.

(J) Following a determination that the owner or operator has failed to perform closure in accordance with subsection (d) of this section or with the registration requirements when required to do so, the executive director may terminate or revoke the owner's or operator's registration or permit and draw on funds in the trust account for the closure of the facility.

(2) Surety bond guaranteeing performance of closure.

(A) An owner or operator of facilities regulated by this chapter and requiring financial assurance may satisfy the financial assurance requirements by obtaining a surety bond which conforms to the requirements of this paragraph. An originally executed copy of the bond must be submitted to the executive

director to receive approval as a registered facility. The bond must, at a minimum, be among those listed as acceptable sureties on Federal bonds in Circular 570 of the United States Department of Treasury.

(B) The wording of the surety bond must be identical to the wording in §330.888(b) of this title (relating to Wording of the Instruments).

(C) Under the terms of the bond, the surety will become liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond. Following a determination that the owner or operator has failed to perform closure in accordance with subsection (d) of this section or with the registration requirements when required to do so, the executive director may revoke the owner's or operator's registration and direct the surety to perform closure in accordance with registration requirements or place the penal sum of the bond into an account as directed by the executive director for the closure of the facility.

(D) For owners or operators that make an initial request for reimbursement from the waste tire recycling fund before September 1, 1993, the penal sum of the bond must be in an amount at least equal to the monthly cumulative closure cost estimate, except as provided in paragraph (6) of this subsection. Owners or operators that make an initial request for reimbursement from the waste tire recycling fund on or after September 1, 1993 must provide financial assurance for closure of each registered or permitted facility based on the full cost estimate for closure as determined in §330.885 of this title (relating to Cost Estimate for Closure).

(E) For owners or operators that make an initial request for reimbursement from the waste tire recycling fund before September 1, 1993, whenever the monthly cumulative closure cost estimate increases to an amount greater than the penal sum of the bond, the owner or operator, within 15 days after the increase, must either cause the penal sum to be increased to an amount at least equal to the monthly cumulative closure cost estimate and submit evidence of such increase to the executive director, or obtain other financial assurance as specified in this section to cover the increase. If the owner or operator fails to increase the penal sum of the bond to equal or exceed the monthly cumulative closure cost estimate, the executive director may not pay a waste tire utilizer from the WTRF for tires shredded during the previous calendar month. If this circumstance occurs more than once within a twelve month period, the executive director may revoke the owner's or operator's registration and require immediate closure. Whenever the monthly cumulative closure cost estimate decreases, the penal sum may be reduced to the amount of the monthly cumulative closure estimate following written approval by the executive director.

(F) Under the terms of the bond, the surety may cancel the bond by sending notice of cancellation by certified mail, return receipt requested, to the owner or operator and to the executive director. Cancellation of the bond may not occur, however, during the 60 days beginning on the date of the receipt of the notice of cancellation by both the owner or operator and the executive director as evidenced by the returned receipts. If the owner or operator fails to provide alternate financial assurance within 30 days of the receipt of notice of cancellation from the surety to the executive director and to the owner or operator, and obtain written approval of the alternate assurance from the executive director, the surety will be required to perform under the terms of the bond.

(G) The owner or operator may cancel the bond if the executive director has given prior written consent based on his receipt of evidence of alternate financial assurance as specified in this section.

(H) The executive director will return the surety bond to the issuing institution for termination when:

(i) An owner or operator substitutes and receives approval from the executive director for alternate financial assurance as specified in this section; or

(ii) The executive director releases the owner or operator from the requirements of this section in accordance with paragraph (8) of this subsection.

(3) Closure letter of credit.

(A) An owner or operator of facilities regulated by this chapter and requiring financial assurance may satisfy the financial assurance requirements by obtaining an irrevocable standby letter of credit. The letter of credit must conform to the requirements of this subparagraph, and an original copy of the letter of credit must be submitted to the executive director to receive approval as a registered facility. The issuing institution must be an entity which has the authority to issue letters of credit and whose letter of credit operations are regulated and examined by a Federal or State agency.

(B) The wording of the letter of credit must be identical to the wording specified in §330.888(c) of this title (relating to Wording of the Instruments).

(C) The letter of credit must be accompanied by a letter from the owner or operator referring to the letter of credit by number, issuing institution, and date, and providing the following information: the TNRCC Registration, name, and address of the facility, and the amount of funds assured for closure of the facility by the letter of credit.

(D) The letter of credit must be irrevocable and issued for a period of at least 1 year. The letter of credit must provide that the expiration date will be automatically extended for a period of at least 1 year unless, at least 120 days before the current expiration date, the issuing institution notifies both the owner or operator and the executive director by certified mail, return receipt requested, of a decision not to extend the expiration date. Under the terms of the letter of credit, the 120 days will begin on the date when both the owner or operator and the executive director have received the notice, as evidenced by the return receipts.

(E) For owners or operators that make an initial request for reimbursement from the waste tire recycling fund before September 1, 1993, the letter of credit must be issued in an amount at least equal to the monthly cumulative closure cost estimate, except as provided in paragraph (6) of this subsection. Owners or operators that make an initial request for reimbursement from the waste tire recycling fund on or after September 1, 1993 must provide financial assurance for closure of each registered facility based on the full cost estimate for closure as determined in §330.885 of this title (relating to Cost Estimate for Closure).

(F) For owners or operators that make an initial request for reimbursement from the waste tire recycling fund before September 1, 1993, whenever the monthly cumulative closure cost estimate increases to an amount greater than the amount of the letter of credit, the owner or operator, within 15 days after the increase, must either cause the letter of credit to be increased so that it at least equals the monthly cumulative closure cost estimate and submit evidence of such increase to the executive director, or obtain other financial

assurance as specified in this section to cover the increase. If the owner or operator fails to increase the amount of the letter of credit to equal or exceed the monthly cumulative closure cost estimate the executive director may not pay a waste tire utilizer from the WTRF for tires shredded during the previous calendar month. If this circumstance occurs more than once within a twelve month period, the executive director may revoke the owner's or operator's registration or permit and require immediate closure. Whenever the monthly cumulative closure cost estimate decreases, the amount of the credit may be reduced to the amount of the monthly cumulative closure cost estimate following written approval by the executive director.

(G) Following a determination that the owner or operator has failed to perform closure in accordance with subsection (d) of this section or with the registration requirements when required to do so, the executive director may draw on the letter of credit and deposit such funds into an account for the closure of the facility.

(H) If the owner or operator does not establish alternate financial assurance as specified in this section and obtain written approval of such alternate assurance from the executive director within 90 days after receipt by both the owner or operator and the executive director of a notice from the issuing institution that it has decided not to extend the letter of credit beyond the current expiration date, the executive director will draw on the letter of credit. The executive director may delay the drawing if the issuing institution grants an extension of the term of the credit. During the last 30 days of any such extension, the executive director will draw on the letter of credit if the owner or operator has failed to provide alternate financial assurance as specified in this section and obtain written approval of such assurance from the executive director.

(I) The executive director will return the letter of credit to the issuing institution for termination when:

(i) An owner or operator substitutes and receives approval from the executive director for alternate financial assurance as specified in this subparagraph and paragraphs (1), (2), (4), and (5) of this subsection; or

(ii) The executive director releases the owner or operator from the requirements of this section in accordance with paragraph (8) of this subsection.

(4) Closure insurance.

(A) An owner or operator of facilities regulated by this chapter and requiring financial assurance may satisfy the financial assurance requirements by obtaining closure insurance which conforms to the requirements of this paragraph. The certificate of insurance must be submitted to the executive director to receive approval as a registered facility. At a minimum, the insurer must be licensed or an eligible surplus lines insurer in Texas and authorized to engage in the business of insurance.

(B) The wording of the certificate of insurance must be identical to the wording specified in §330.888(d) of this title (relating to Wording of the Instruments).

(C) For owners or operators that make an initial request for reimbursement from the waste tire recycling fund before September 1, 1993, the closure insurance policy must be issued for a face amount

at least equal to the monthly cumulative closure cost estimate, except as provided in paragraph (6) of this subsection. The term "face amount" means the total amount the insurer is obligated to pay under the policy. Actual payments by the insurer will not change the face amount, although the insurer's future liability will be lowered by the amount of the payments. Owners or operators that make an initial request for reimbursement from the waste tire recycling fund on or after September 1, 1993 must provide financial assurance for closure of each registered based on the full cost estimate for closure as determined in §330.885 of this title (relating to Cost Estimate for Closure).

(D) The closure insurance policy shall guarantee that funds will be available whenever closure occurs. The policy shall also guarantee that once closure begins, the issuer will be responsible for paying out funds, up to an amount equal to the face amount of the policy, at the direction of the executive director, to such party or parties as the executive director specifies.

(E) After beginning closure, an owner or operator or any other person authorized by the executive director to perform closure may request reimbursement for closure expenditures by submitting itemized bills to the executive director. Within 60 days after receiving bills for closure activities, the executive director will determine whether the closure expenditures are in accordance with the permit or registration or otherwise justified, and if so, he will instruct the insurer to make reimbursement in such amounts as the executive director specifies in writing. If the executive director has reason to believe that the cost of closure will be significantly greater than the face amount of the policy, he may withhold reimbursement of such amounts as he deems prudent until he determines, in accordance with paragraph (8) of this subsection, that the owner or operator is no longer required to maintain financial assurance for closure of the facility.

(F) The owner or operator must maintain the policy in full force and effect until the executive director consents to termination of the policy by the owner or operator as specified in subparagraph (J) of this paragraph. Failure of the owner or operator to pay the insurance premium, without substitution of alternate financial assurance as specified in this section, shall constitute a violation of this section, warranting such remedy as the executive director deems necessary. Such violation will be deemed to begin upon receipt by the executive director of a notice of future cancellation, termination, or failure to renew due to nonpayment of the premium, rather than upon the date of expiration of the policy.

(G) Each policy must contain provisions allowing assignment to a successor owner or operator. Such assignment may be conditional upon consent of the insurer, provided such consent is not unreasonably refused.

(H) The policy must provide that the insurer may not cancel, terminate, or fail to renew the policy except for failure to pay the premium. The automatic renewal of the policy must, at a minimum, provide the insured with the option of renewal at the face amount of the expiring policy. If there is a failure to pay the premium, the insurer may elect to cancel, terminate, or fail to renew the policy by sending notice by certified mail, return receipt requested, to the owner or operator and the executive director. Cancellation, termination, or failure to renew may not occur, however, during 120 days beginning with date of receipt of the notice by both the executive director and the owner or operator, as evidenced by the return receipts. Cancellation, termination, or failure to renew may not occur and the policy shall remain in full force and effect in the event that on or before the date of expiration:

(i) The executive director deems the facility abandoned; or

(ii) The registration expires, is terminated, or revoked or a new or renewal registration is denied; or

(iii) Closure is ordered by the Texas Natural Resource Conservation Commission or a United States District Court or other court of competent jurisdiction; or

(iv) The owner or operator is named as debtor in a voluntary or involuntary proceeding under Title 11 (Bankruptcy), United States Code; or

(v) The premium due is paid.

(I) For owners or operators that make an initial request for reimbursement from the waste tire recycling fund before September 1, 1993, whenever the monthly cumulative closure cost estimate increases to an amount greater than the face amount of the policy, the owner or operator, within 15 days after the increase must either cause the face amount to be increased to an amount at least equal to the monthly cumulative closure cost estimate and submit evidence of such increase to the executive director, or obtain other financial assurance as specified in this paragraph and paragraphs (1)-(3) and (5) of this subsection to cover the increase. If the owner or operator fails to increase the face amount of the policy to equal or exceed the monthly cumulative closure cost estimate the executive director may not pay a waste tire utilizer from the WTRF for tires shredded during the previous calendar month. If this circumstance occurs more than once within a twelve month period, the TNRCC may revoke the owner's or operator's registration and require immediate closure. Whenever the monthly cumulative closure cost estimate decreases, the face amount may be reduced to the amount of the monthly cumulative closure cost estimate following written approval by the executive director.

(J) The executive director will give written consent to the owner or operator that the insurance policy may be terminated when:

(i) an owner or operator substitutes alternate financial assurance as specified in this subparagraph and paragraphs (1)-(3) and (5) of this subsection; or

(ii) the executive director releases the owner or operator in accordance with paragraph (8) of this subsection.

(5) (Reserved) Financial Test for Publicly Owned Facilities. The financial test of self-insurance for publicly owned facilities will be developed when the United States EPA adopts final rules including the financial test of self-insurance for local governments for municipal solid waste landfills in the Subtitle D program. Until the test is adopted in final rules of the commission, city and county governments must choose between subsection (e)(1)-(4) of this section.

(6) Use of Multiple Financial Options. An owner or operator may satisfy the requirements of this section by establishing more than one financial option per facility. The options shall be as specified in paragraphs (1)-(4), respectively, of this subsection, except that it is the combination of options, rather than the single option, which must in total provide financial assurance. For owners or operators that make an initial request for reimbursement from the waste tire recycling fund before September 1, 1993, the combination of options must be in an amount at least equal to the monthly cumulative closure cost estimate. For owners or



operators that make an initial request for reimbursement from the waste tire recycling fund on or after September 1, 1993, the combination of options must provide financial assurance for closure of each registered or permitted facility based on the full cost estimate for closure as determined in §330.885 of this title (relating to Cost Estimate for Closure). The executive director may invoke any or all of the options to provide for closure of the facility.

(7) Use of a financial option for multiple facilities. An owner or operator may use a financial assurance option specified in this section to meet the requirements of this section for more than one facility. Evidence of financial assurance submitted to the executive director must include a list showing, for each facility, the TNRCC registration, name, address, and the amount of funds for closure assured by the option. The amount of funds available through the option must be no less than the sum of funds that would be available if a separate option had been established and maintained for each facility.

(8) Release of the owner or operator from the financial assurance requirements. Within 60 days after receiving certifications from the owner or operator that closure has been accomplished in accordance with registration requirements and the closure requirements of subsection (d) of this section, the executive director shall notify the owner or operator in writing that financial assurance for closure of the facility is no longer required, unless the executive director has reason to believe that closure has not been in accordance with the registration requirements.

Adopted May 29, 1996

Effective July 1, 1996

**§330.887. Incapacity of Owners or Operators or Financial Institutions.**

(a) An owner or operator must notify the executive director by certified mail of the commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), United States Code, naming the owner or operator as debtor, within 10 business days after the commencement of the proceeding.

(b) An owner or operator who fulfills the requirements of §330.886 of this title (relating to Financial Assurance for Closure) by obtaining a letter of credit, surety bond, or insurance policy will be deemed to be without the required financial assurance coverage in the event of bankruptcy, insolvency, or a suspension or revocation of the license or charter of the issuing institution. The owner or operator must establish other acceptable financial assurance coverage within 30 days after such an event.

**§330.888. Wording of the Instruments.**

(a) A trust agreement for a trust fund, as specified in §330.886(e)(1) of this title (relating to Financial Assurance for Closure), must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

**TRUST AGREEMENT**

TRUST AGREEMENT, the "Agreement," entered into as of (date) by and between (name of the owner or operator), a (name of State) (insert "corporation," "partnership," "association," or "proprietorship"), the

"Grantor," and (name of corporate trustee), (insert "incorporated in the State of \_\_\_\_\_" or "a national bank"), the "Trustee."

Whereas, the Texas Natural Resource Conservation Commission, "TNRCC", an agency of the State of Texas, has established certain regulations applicable to the Grantor, requiring that an owner or operator of a facility shall provide assurance that funds will be available when needed for closure of the facility,

Whereas, the Grantor has elected to establish a trust to provide all or part of such financial assurance for the facility(ies) identified herein,

Whereas, the Grantor, acting through its duly authorized officers, has selected the Trustee to be the trustee under this agreement, and the Trustee is willing to act as trustee,

Now, therefore, the Grantor and the Trustee agree as follows:

Section 1. Definitions. As used in this Agreement:

(a) The term "Grantor" means the owner or operator who enters into this Agreement and any successors or assigns of the Grantor.

(b) The term "Trustee" means the Trustee who enters into this Agreement and any successor Trustee.

(c) Facility or activity means any facility subject to regulation under Subchapter R of 30 TAC, Chapter 330.

Section 2. Identification of Facilities and Cost Estimates. This Agreement pertains to the facilities and cost estimates identified on attached Schedule A (on Schedule A, for each facility list the TNRCC Registration or Permit Number, name, address, and the current closure cost estimate, or portions thereof, for which financial assurance is demonstrated by this Agreement).

Section 3. Establishment of Fund. The Grantor and the Trustee hereby establish a trust fund, the "Fund," for the benefit of TNRCC. The Grantor and the Trustee intend that no third party have access to the Fund except as herein provided. The Fund is established initially as consisting of the property, which is acceptable to the Trustee, described in Schedule B attached hereto. Such property and any other property subsequently transferred to the Trustee is referred to as the Fund, together with all earnings and profits thereon, less any payments or distributions made by the Trustee pursuant to this Agreement. The Fund shall be held by the Trustee, IN TRUST, as hereinafter provided. The Trustee shall not be responsible nor shall it undertake any responsibility for the amount or adequacy of, nor any duty to collect from the Grantor, any payments necessary to discharge any liabilities of the Grantor established by TNRCC.

Section 4. Payment for Closure. The Trustee shall make payments from the Fund as the executive director shall direct, in writing, to provide for the payment of the costs of closure of the facilities covered by this Agreement. The Trustee shall reimburse the Grantor or other persons as specified by the executive director from the Fund for closure expenditures in such amounts as the executive director shall direct in writing. In addition, the Trustee shall refund to the Grantor such amounts as the executive director specifies in writing. Upon refund, such funds shall no longer constitute part of the Fund as defined herein.

Section 5. Payments Comprising the Fund. Payments made to the Trustee for the Fund shall consist of cash or securities acceptable to the Trustee.

Section 6. Trustee Management. The Trustee shall invest and reinvest the principal and income of the Fund and keep the Fund invested as a single fund, without distinction between principal and income, in accordance with general investment policies and guidelines which the Grantor may communicate in writing to the Trustee from time to time, subject, however, to the provisions of this Section. In investing, reinvesting, exchanging, selling, and managing the Fund, the Trustee shall discharge his duties with respect to the trust fund solely in the interest of the beneficiary and with the care, skill, prudence, and diligence under the circumstances then prevailing which persons of prudence, acting in a like capacity and familiar with such matters, would use

in the conduct of an enterprise of a like use in the conduct of an enterprise of a like character and with like aims; except that:

(i) Securities or other obligations of the Grantor, or any other owner or operator of the facilities, or any of their affiliates as defined in the Investment Company Act of 1940, as amended, 15 U.S.C. 80a-2(a), shall not be acquired or held unless they are securities or other obligations of the Federal or a State government;

(ii) The Trustee is authorized to invest the Fund in time or demand deposits of the Trustee, to the extent insured by an agency of the Federal or State government; and

(iii) The Trustee is authorized to hold cash awaiting investment or distribution uninvested for a reasonable time and without liability for the payment of interest thereon.

Section 7. Commingling and Investment. The Trustee is expressly authorized in its discretion:

(a) To transfer from time to time any or all of the assets of the Fund to any common, commingled, or collective trust fund created by the Trustee in which the Fund is eligible to participate, subject to all of the provisions thereof, to be commingled with the assets of other trusts participating therein; and

(b) To purchase shares in any investment company registered under the Investment Company Act of 1940, 15 U.S.C. 80a-1 et seq., including one which may be created, managed, underwritten, or to which investment advice is rendered or the shares of which are sold by the Trustee. The Trustee may vote shares in its discretion.

Section 8. Express Powers of Trustee. Without in any way limiting the powers and discretions conferred upon the Trustee by the other provisions of this Agreement or by law, the Trustee is expressly authorized and empowered:

(a) To sell, exchange, convey, transfer, or otherwise dispose of any property held by it, by public or private sale. No person dealing with the Trustee shall be bound to see to the application of the purchase money or to inquire into the validity or expediency of any such sale or other disposition;

(b) To make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;

(c) To register any securities held in the Fund in its own name or in the name of a nominee and to hold any security in bearer form or in book entry, or to combine certificates representing such securities with certificates of the same issue held by the Trustee in other fiduciary capacities, or to deposit or arrange for the deposit of such securities in a qualified central depository even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depository with other securities deposited therein by another person, or to deposit or arrange for the deposit of any securities issued by the United States Government, or any agency or instrumentality thereof, with a Federal Reserve bank, but the books and records of the Trustee shall at all times show that all such securities are part of the Fund;

(d) To deposit any cash in the Fund in interest-bearing accounts maintained or savings certificates issued by the Trustee, in its separate corporate capacity, or in any other banking institution affiliated with the Trustee, to the extent insured by an agency of the Federal or State government; and

(e) To compromise or otherwise adjust all claims in favor of or against the Fund.

Section 9. Taxes and Expenses. All taxes of any kind that may be assessed or levied against or in respect of the Fund and all brokerage commissions incurred by the Fund shall be paid from the Fund. All other expenses incurred by the Trustee in connection with the administration of this Trust, including fees for legal services rendered to the Trustee, the compensation of the Trustee to the extent not paid directly by the Grantor, and all proper charges and disbursements of the Trustee shall be paid from the Fund.

Section 10. Quarterly Valuation. The Trustee shall quarterly, within 15 days of quarter-end, furnish to the Grantor and to the appropriate executive director a statement confirming the value of the Trust. Quarter-ends are designated as March 31, June 30, September 30, and December 31. Any securities in the Fund shall be valued

at market value as of quarter-end. The failure of the Grantor to object in writing to the Trustee within 30 days after the statement has been furnished to the Grantor and the executive director shall constitute a conclusively binding assent by the Grantor, barring the Grantor from asserting any claim or liability against the Trustee with respect to matters disclosed in the statement.

Section 11. Advice of Counsel. The Trustee may from time to time consult with counsel, who may be counsel to the Grantor, with respect to any question arising as to the construction of this Agreement of any action to be taken hereunder. The Trustee shall be fully protected, to the extent permitted by law, in acting upon the advice of counsel.

Section 12. Trustee Compensation. The Trustee shall be entitled to reasonable compensation for its services as agreed upon in writing from time to time with the Grantor.

Section 13. Successor Trustee. The Trustee may resign or the Grantor may replace the Trustee, but such resignation or replacement shall not be effective until the Grantor has appointed a successor trustee and this successor accepts the appointment. The successor trustee shall have the same powers and duties as those conferred upon the Trustee hereunder. Upon the successor trustee's acceptance of the appointment, the Trustee shall assign, transfer, and pay over to the successor trustee the funds and properties then constituting the Fund. If for any reason the Grantor cannot or does not act in the event of the resignation of the Trustee, the Trustee may apply to a court of competent jurisdiction for the appointment of a successor trustee or for instructions. The successor trustee shall specify the date on which it assumes administration of the trust in a writing sent to the Grantor, the executive director, and the present Trustee by certified mail 10 days before such change becomes effective. Any expenses incurred by the Trustee as a result of any of the acts contemplated by this Section shall be paid as provided in Section 9.

Section 14. Instructions to the Trustee. All orders, requests, and instructions by the Grantor to the Trustee shall be in writing, signed by such persons as are designated in the attached Exhibit A or such other designees as the Grantor may designate by amendment to Exhibit A. The Trustee shall be fully protected in acting without inquiry in accordance with the Grantor's orders, requests, and instructions. All orders, requests, and instructions by the executive director to the Trustee shall be in writing, signed by his designee, and the Trustee shall act and shall be fully protected in acting in accordance with such orders, requests, and instructions. The Trustee shall have the right to assume, in the absence of written notice to the contrary, that no event constituting a change or a termination of the authority of any person to act on behalf of the Grantor or TNRCC hereunder has occurred. The Trustee shall have no duty to act in the absence of such orders, requests, and instructions from the Grantor and/or TNRCC, except as provided for herein.

Section 15. Notice of Nonpayment. The Trustee shall notify the Grantor and the executive director, by certified mail within 15 days following the expiration of any month-end period, if no payment is received from the Grantor during that period.

Section 16. Amendment of Agreement. This Agreement may be amended by an instrument in writing executed by the Grantor, the Trustee, and the appropriate executive director, or by the Trustee and the appropriate executive director if the Grantor ceases to exist.

Section 17. Irrevocability and Termination. Subject to the right of the parties to amend this Agreement as provided in Section 16, this Trust shall be irrevocable and shall continue until terminated at the written agreement of the Grantor, the Trustee, and the executive director, or by the Trustee and the executive director if the Grantor ceases to exist. Upon termination of the Trust, all remaining trust property, less final trust administration expenses, shall be delivered to the Grantor.

Section 18. Immunity and Indemnification. The Trustee shall not incur personal liability of any nature in connection with any act or omission, made in good faith, in the administration of this Trust, or in carrying out any directions by the Grantor or the executive director issued in accordance with this Agreement. The Trustee

shall be indemnified and saved harmless by the Grantor or from the Trust Fund, or both, from and against any personal liability to which the Trustee may be subjected by reason of any act or conduct in its official capacity, including all expenses reasonably incurred in its defense in the event the Grantor fails to provide such defense.

Section 19. Choice of Law. This Agreement shall be administered, construed, and enforced according to the laws of the State of Texas.

Section 20. Interpretation. As used in this Agreement, words in the singular include the plural and words in the plural include the singular. The descriptive headings for each Section of this Agreement shall not affect the interpretation or the legal efficacy of this Agreement.

In Witness Whereof the parties have caused this Agreement to be executed by their respective officers duly authorized and their corporate seals to be hereunto affixed and attested as of the date first above written. The parties below certify that the wording of this Agreement is identical to the wording specified in 30 Texas Administrative Code §330.888(a)(1) as such regulations were constituted on the date first above written.

(Signature of Grantor)

By: (Title)

Attest:

(Title)

(Seal)

(Signature of Trustee)

By: (Title)

Attest:

(Title)

(Seal)

(b) The following is an example of the certification of acknowledgment which must accompany the trust agreement for a trust fund as specified in §330.886(e)(1) of this title.

State of \_\_\_\_\_

County of \_\_\_\_\_

On this (date), before me personally came (owner or operator) to me known, who, being by me duly sworn, did depose and say that she/he resides at (address), that she/he is (title) of (corporation), the corporation described in and which executed the above instrument; that she/he knows the seal of said corporation; that the seal affixed to such instrument is such corporate seal; that it was so affixed by order to the Board of Directors of said corporation, and that she/he signed her/his name thereto by like order.

(signature of Notary Public)

(c) A surety bond guaranteeing performance of closure, as specified in §330.886(e)(2) of this title must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

### PERFORMANCE BOND

Dated bond executed: \_\_\_\_\_

Effective date: \_\_\_\_\_

Principal: (legal name and business address of owner or operator).

Type of organization: (insert "individual," "joint venture," "partnership," or "corporation").

State of incorporation: \_\_\_\_\_

Surety(ies): (name(s) and business address(es)).

TNRCC Registration or Permit Number, name, address, and closure amount(s) for each facility guaranteed by this bond (indicate closure amounts separately): \_\_\_\_\_

Total penal sum of bond: \$ \_\_\_\_\_

Surety's bond number: \_\_\_\_\_

Know All Persons By These Presents, That we, the Principal and Surety(ies) hereto are firmly bound to the Texas Natural Resource Conservation Commission (hereinafter called TNRCC), in the above penal sum for the payment of which we bind ourselves, our heirs, executors, administrators, successors, and assigns jointly and severally; provided that, where the Surety(ies) are corporations acting as co-sureties, we, the Sureties, bind ourselves in such sum "jointly and severally" only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each Surety binds itself, jointly and severally with the Principal, for the payment of such sum only as is set forth opposite the name of such Surety, but if no limit of liability is indicated, the limit of liability shall be the full amount of the penal sum.

Whereas said Principal is required, under Subchapter R of 30 Texas Administrative Code, Chapter 330, the Waste Tire Management Program, to be registered or have a permit in order to own or operate each facility identified above, and

Whereas said Principal is required to provide financial assurance for closure as a condition of the permit or provisions to operate as a registered owner or operator;

Now, therefore, the conditions of this obligation are such that if the Principal shall faithfully perform closure, whenever required to do so, of each facility for which this bond guarantees closure in accordance with requirements of the permit or registration as such permit or registration may be amended, pursuant to all applicable laws, statutes, rules, and regulations, as such laws, statutes, rules, and regulations may be amended,

Or, if the Principal shall provide alternate financial assurance, and obtain the TNRCC executive director's written approval of such assurance, within 30 days after the date of notice of cancellation is received by both the Principal and the executive director from the Surety(ies), then this obligation shall be null and void, otherwise it is to remain in full force and effect.

The Surety(ies) shall become liable on this bond obligation only when the Principal has failed to fulfill the conditions described above.

Upon notification by the executive director that the Principal has been found in violation of the closure requirements for a facility for which this bond guarantees performance of closure, the Surety(ies) shall either perform closure in accordance with permit or registration requirements or place the closure amount guaranteed for the facility into an account as directed by the executive director.

Upon notification by the executive director that the Principal has failed to provide alternate financial assurance and obtain written approval of such assurance from the executive director during the 30 days following receipt by both the Principal and the executive director of a notice of cancellation of the bond, the Surety(ies) shall place funds in the amount guaranteed for the facility(ies) into an account as directed by the executive director.

The Surety(ies) hereby waive(s) notification of amendments to permits, registrations, applicable laws, statutes, rules, and regulations and agrees that no such amendment shall in any way alleviate its (their) obligation on this bond.

The liability of the Surety(ies) shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the aggregate to the penal sum of the bond, but in no event shall the obligation of the Surety(ies) hereunder exceed the amount of said penal sum.

The Surety(ies) may cancel the bond by sending notice of cancellation by certified mail to the Principal and to the executive director, provided, however, that cancellation shall not occur during the 60 days beginning on the date of receipt of the notice of cancellation by both the Principal and the executive director, as evidenced by the return receipts.

The Principal may terminate this bond by sending written notice to the Surety(ies), provided, however, that no such notice shall become effective until the Surety(ies) receive(s) written authorization for termination of the bond by the executive director of the TNRCC.

Principal and Surety(ies) hereby agree to adjust the penal sum of the bond yearly so that it guarantees a new closure amount, provided that the penal sum does not increase by more than 20 percent in any one year, and no decrease in the penal sum takes place without the written permission of the executive director.

In Witness Whereof, the Principal and Surety(ies) have executed this Bond and have affixed their seals on the date set forth above.

The persons whose signatures appear below hereby certify that they are authorized to execute this surety bond on behalf of the Principal and Surety(ies) and that the wording of this surety bond is identical to the wording specified in 30 TAC, §330.888(b) as such regulations were constituted on the date this bond was executed.

Principal

(Signature(s))

(Name(s))

(Title(s))

(Corporate seal)

Corporate Surety(ies)

(Name and address)

State of incorporation: \_\_\_\_\_.

Liability limit: \$\_\_\_\_\_.

(Signature(s))

(Name(s) and title(s))

(Corporate seal)

(For every co-surety, provide signature(s), corporate seal, and other information in the same manner as for Surety above.)

Bond premium: \$\_\_\_\_\_.

(d) A letter of credit, as specified in §330.886(e)(3) of this title, must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

IRREVOCABLE STANDBY LETTER OF CREDIT

Executive Director

Texas Natural Resource Conservation Commission  
P. O. Box 13087  
Austin, TX 78711-3087

Dear Sir or Madam:

We hereby establish our Irrevocable Standby Letter of Credit No. \_\_\_\_\_ in your favor, at the request and for the account of (owner's or operator's name and full address) up to the aggregate amount of (in words) U.S. dollars, \$\_\_\_\_\_ available upon presentation by the executive director of the Texas Natural Resource Conservation Commission of

(1) Your sight draft, bearing reference to this letter of credit No. \_\_\_\_\_, and

(2) Your signed statement reading as follows: "I certify that the amount of the draft is payable pursuant to regulations issued under authority of the Solid Waste Disposal Act, Tire Recycling Program."

This letter of credit is effective as of (date) and shall expire on (date at least 1 year later), but such expiration date shall be automatically extended for a period of (at least 1 year) on (date) and on each successive expiration date, unless, at least 120 days before the current expiration date, we notify both you and (owner's or operator's name) by certified mail that we have decided not to extend this letter of credit beyond the current expiration date. In the event you are so notified, any unused portion of the credit shall be available upon presentation of your sight draft for 120 days after the date of receipt by both you and (owner's or operator's name), as shown on the signed return receipts.

Whenever this letter of credit is drawn on under and in compliance with the terms of this credit, we shall duly honor such draft upon presentation to us.

We certify that the wording of this letter of credit is identical to the wording specified in 30 Texas Administrative Code §330.888(c) as such regulations were constituted on the date shown immediately below.

[Signature(s) and title(s) of official(s) of issuing institution]

[Date]

This credit is subject to [insert "the most recent edition of the Uniform Customs and Practice for Documentary Credits, published by the International Chamber of Commerce," or "the Uniform Commercial Code"].

(e) A certificate of insurance, as specified in 30 Texas Administrative Code §330.886(e)(4) of this title, must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

#### Certificate of Insurance for Closure

Name and Address of Insurer (herein called the "insurer"):

---

Name and Address of Insured (herein called the "insured"):

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Facilities covered: (list for each facility: The TNRCC Registration or Permit Number, name, address, and the amount of insurance for closure (these amounts for all facilities covered must total the face amount shown below)).



Face Amount: \_\_\_\_\_  
Policy Number: \_\_\_\_\_  
Effective Date: \_\_\_\_\_

The insurer hereby certifies that it has issued to the Insured the policy of insurance identified above to provide financial assurance for closure for the facilities identified above. The Insurer further warrants that such policy conforms in all respects with the requirements of 30 Texas Administrative Code §330.886(e)(4), as applicable and as such regulations were constituted on the date shown immediately below. It is agreed that any provision of the policy inconsistent with such regulations is hereby amended to eliminate such inconsistency.

Whenever requested by the executive director of the Texas Natural Resource Conservation Commission ("TNRCC"), the Insurer agrees to furnish to the executive director a duplicate original of the policy listed above, including all endorsements thereon.

I hereby certify that the wording of this certificate is identical to the wording specified in 30 Texas Administrative Code §330.888(d) as such regulations were constituted on the date shown immediately below, and that the Insurer is either licensed or an eligible surplus lines insurer in Texas and authorized to engage in the business of insurance.

(Authorized signature of Insurer)  
(Name of person signing)  
(Title of person signing)  
(Date)

**§330.889. Special Conditions for Beneficial Use of Scrap Tires.**

(a) Beneficial uses of scrap tires for erosion control, reefs in coastal waters, decorations, containment walls for composting or commercial operations, traffic control, or bumpers for boat dock and boats shall not require a registration number.

(b) At no time shall scrap tires utilized for beneficial use be allowed to migrate from the beneficial use location due to surface water run-off, stream or river flow, or other such occurrence.

(c) Scrap tires utilized for beneficial use shall be staked or tied down to a permanent natural or man-made object. The tires shall be chained or tied together provided at least two of the tires are permanently anchored. A containment barrier such as fencing or another suitable product can also be used to prevent tire migration. A one inch diameter hole shall be drilled into each tire at its lowest point to provide drainage and prevent the breeding of vectors.

(d) All beneficially used scrap tires shall be inspected on a regular basis to assure compliance with §330.831(b) of this title (relating to Storage of Whole Used or Scrap Tires or Shredded Tire Pieces).

(e) Erosion control does not include the stockpiling of scrap tires in a ravine, ditch, or eroded area. All tires in excess of those actually required for the erosion control project shall be removed from the site.

(f) Beneficial use of shredded tire pieces is not regulated by this subchapter except for shredded tire pieces that were generated from a waste tire facility that received reimbursement from the WTRF. Such shredded

tire pieces shall not be used for beneficial use at a permitted municipal or industrial solid waste landfill except as approved by the executive director.

(g) Seventy-five percent of all scrap tires collected and stored with the intention of being utilized for beneficial use purposes, shall be used within 12 months of their accumulation at a site.

(h) Any process involving the beneficial use of scrap tires or tire pieces shall be reviewed and approved by the executive director prior to executing the beneficial use.

Adopted May 29, 1996

Effective July 1, 1996